

WATERS

CHAPTER 562

HOUSE BILL NO. 1385

(Representatives Nelson, Davis, Fegley, Finley-DeVille, D. Johnson)
(Senators Dwyer, Kannianen, Schaible, Sorvaag)

AN ACT to amend and reenact sections 61-02-24 and 61-02-24.1 of the North Dakota Century Code, relating to tribal contracts with the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-24 of the North Dakota Century Code is amended and reenacted as follows:

61-02-24. Cooperation and coordination with all existing agencies/entities.

1. The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:
 4. a. With the United States and any department, agency, or officer thereof.
 2. b. With the states of Minnesota, South Dakota, Montana, and Wyoming, or any political subdivision thereof, and with any other state, and with any department or officer or political subdivision of any state.
 3. c. With Canada or any of its provinces, and with any agency, department, or officer of Canada or any of its provinces.
 - d. With federally recognized Indian tribes, or any agency, department, or officer thereof.
2. The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

SECTION 2. AMENDMENT. Section 61-02-24.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-24.1. Cooperation and participation of political subdivisions and federally recognized Indian tribes.

AllAny political subdivisions~~subdivision~~, including ~~counties~~a county, ~~township~~township, ~~cities~~city, ~~park districts~~district, and water resource ~~districts~~district, ~~and federally recognized Indian tribes~~, may separately or jointly, with ~~other political subdivisions~~each other, the state of North Dakota through the commission, or federal departments or agencies, investigate, plan, and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction, and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the commission to pay rents, charges, or other payments for the use of works of the commission.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 563

HOUSE BILL NO. 1073

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-03-21 of the North Dakota Century Code, relating to the department of water resources authority to require operating plans for dams.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-03-21 of the North Dakota Century Code is amended and reenacted as follows:

61-03-21. Plans of operation for reservoirs - Adequate structure.

~~Every operator of a water storage reservoir operator in North Dakota having a capacity of more than one thousand acre feet [1233481.84 cubic meters] annually shall file with the department, between the first and fifteenth day of February, an operating plan for the reservoir for the calendar year in which the plan is filed. The operator of the reservoir shall cooperate with the department to make all water releases compatible with the best interest of the greatest number of downstream water users and affected landowners. If the department declares an emergency in connection with the operation of the reservoir, the operator promptly shall submit to the department a separate interim operating plan for the reservoir. The interim operating plan must be coordinated and integrated with the suggestions and plans of the department to serve the affected persons during the emergency. The department may require the reservoir operators to maintain adequate structures and operate ~~them~~the structures in a manner to prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of affected persons affected by the reservoirs. If an operator fails to maintain and operate adequate structures, the department shall set a place and time for hearing and serve notice upon the operator to show cause why the operator's water permit should not be canceled. A copy of any order canceling the water right must be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the department in accordance with chapter 28-32.~~

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 564

HOUSE BILL NO. 1077

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to water storage contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

Water storage contracts.

A federal agency that enters into discussions with an entity relating to a water storage contract from a reservoir partially or wholly located within the state shall provide the department of water resources with a sixty-day notice once the discussions begin. Communications regarding a water storage contract must be copied to the department of water resources. The department of water resources must be provided with an executed copy of a water storage contract.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 565

HOUSE BILL NO. 1074

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to informational hearings for water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-01.1. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative proceeding" means an appeal under chapter 28-32 of a recommended decision prepared by the director of the department of water resources for a water permit application.
2. "Assignment" means the change of a water permit from one permit holder to another permit holder.
3. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
4. "Commission" means the state water commission.
5. "Conditional water permit" means a water permit that has not been perfected.
6. "Domestic use" means the use of water by at least one family unit or household obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household 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.
7. "Fish, wildlife, and other recreational uses" 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.
8. "Fossil byproduct water" means water obtained as a byproduct of extraction and separation from oil, gas, and other hydrocarbons, from a formation that is both not a potable aquifer at the extraction location and is situated below the deepest potable aquifer by the practically impermeable layer.

9. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- ~~10. "Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.~~
44. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
- ~~42-11.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- ~~43-12.~~ "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
- ~~44-13.~~ "Party of record" means a person who filed written comments by the date specified under subsection 5 of section 61-04-05.
- ~~45-14.~~ "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the department of water resources has inspected the works to verify all conditions have been met.
- ~~46-15.~~ "Permitholder" means the name of the entity holding a water permit.
- ~~47-16.~~ "Point of diversion" means the tract of land where the waters of the state are withdrawn or diverted.
- ~~48-17.~~ "Priority date" means the date assigned to an application or water right.
18. "Public hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.
19. "Rural water system" means a water supply system designed to serve regional needs.
20. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.
21. "Water right" means the right established under this title to appropriate or store waters of the state.

SECTION 2. AMENDMENT. Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for ~~an informational~~ a public hearing regarding the proposed appropriation must be filed with the department of water resources. The notice also must state anyone who files written comments with the department will be mailed the department's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.

SECTION 3. AMENDMENT. Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.
2. A person filing written comments also may request ~~an informational~~ a public hearing ~~on the application for the department to obtain additional information to evaluate the application or to receive public input~~ by the date specified by the department of water resources under subsection 5 of section 61-04-05. If a request for ~~an informational~~ a public hearing is made and the department determines ~~an informational~~ a public hearing is necessary ~~to obtain additional information to evaluate the application or to receive public input~~, the department shall designate a time and place for the ~~informational~~public hearing and serve a notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use permitholders request the ~~informational~~public hearing to be held locally, the department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The department of water resources shall consider all written comments received and testimony presented at ~~an informational~~ a public hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:
 - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;
 - b. Denial of the application; or
 - c. Deferral of the application.

5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the department of water resources or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made and the department determines an adjudicative proceeding is necessary, the department shall designate a time and place for the adjudicative proceeding and serve the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 566

HOUSE BILL NO. 1075

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to create and enact section 61-04-24.1 of the North Dakota Century Code, relating to comments on the cancellation of water rights; and to amend and reenact sections 61-04-24 and 61-04-25 of the North Dakota Century Code, relating to the notice and hearing process for the cancellation of water rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

61-04-24. Cancellation of water rights - Notice - Contents.

1. If it appears any water appropriation or portion of an appropriation has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the department of water resources shall set a place and time for a hearing. ~~For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. Any permitholder using water from a common source of supply, any applicant for a permit to use water from a common source of supply, or any interested party may request the department of water resources to conduct a hearing to cancel any unused water rights to the common source of supply. Any decision of the department in denying a request for a hearing may be appealed in accordance with chapter 28-32. Prior to the hearings, the department shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by a time and at a place why the water appropriation or a portion of the appropriation should not be canceled.~~ give notice of cancellation by certified mail to the permitholder and to the owners of land benefited by the appropriation as indicated on the water permit.
2. ~~In addition to the time and place of hearing, the~~ The notice must contain:
 - a. A description of the water appropriation.
 - b. The permit number ~~upon the records of the commission.~~
 - c. The date of priority.
 - d. ~~The point~~ All points of diversion.

- e. A description of the ~~lands~~ land benefited by the appropriation as indicated on the water permit ~~on file with the commission.~~
 - f. ~~Notice that the permit holder, the owners of land benefited by the 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 the appropriation, or a portion of the appropriation, should not be canceled.~~Notification a notice of cancellation will be published in the county newspaper of record indicating when written comments on the cancellation must be submitted to the department for consideration.
3. ~~The notice must be served personally or sent by certified mail at least thirty days before the date of hearing to the permit holder and to the owners of land benefited by the appropriation as indicated on the water permit on file with the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the recorder. In addition, the notice must be published.~~The department shall publish a notice of cancellation in the official newspaper ~~in of~~ the county~~ies~~ in which ~~the~~ each point of diversion is located once each week for two consecutive weeks prior to the date of hearing. The notice of cancellation must include the name and address of the permit holder, a description of the water appropriation, the permit number, the priority date, the location of all points of diversion, and a description of all land benefited by the appropriation as indicated on the water permit. The notice must state a person that files written comments with the department will be mailed the department's final decision on cancellation.
 4. The department shall pay the notice of cancellation publication costs.

SECTION 2. Section 61-04-24.1 of the North Dakota Century Code is created and enacted as follows:

61-04-24.1. Cancellation of water rights - Comments.

Comments regarding the proposed cancellation must be in writing and filed by the date specified by the department. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.

SECTION 3. AMENDMENT. Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

61-04-25. Cancellation of water rights - Hearing-- Appeal.

~~At the hearing the recommended decision of the department of water resources is prima facie evidence for cancellation of the water permit or portion of the permit. If no one appears at the hearing, comments are submitted by the date specified by the department, the water permit or portion of the water permit must be canceled. If interested parties appear and contest the cancellation, the department shall hear the evidence and, if it appears the water has not been put to a beneficial use, or, having been put to a beneficial use at one time, has ceased to be used for the purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the permit, or a portion of the permit, must be canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water~~

~~permit reasonably may be necessary for the future water requirements of the municipality or the rural water system.~~ If comments are received, the department shall consider all written comments and issue a final decision. The final decision must be mailed to the permitholder, to the owners of land benefited by the appropriation as indicated on the water permit, and any person that submitted written comments by the date specified by the department. If the final decision is to cancel the water permit or any portion of the water permit, the order canceling the water permit or any portion of the water permit must be sent to the permitholder with the final decision. An appeal may be taken from the decision of the department in accordance with chapter 28-32.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 567

HOUSE BILL NO. 1072

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact subsection 1 of section 61-04.1-04, section 61-04.1-06, and subdivision h of subsection 2 of section 61-04.1-16 of North Dakota Century Code, relating to the powers and duties of the department of water resources; and to repeal section 61-04.1-35 of the North Dakota Century Code, relating to the required bond, cash, or negotiable securities required when bids are submitted to the atmospheric resources board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota atmospheric resource board is a division of the ~~state water commission~~department of water resources. The board is composed of the director of the state aeronautics commission, a representative of the department of environmental quality, the director of the department of water resources, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district:
 - a. When the term of office of any board member from any district is about to expire.
 - b. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

SECTION 2. AMENDMENT. Section 61-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-06. Direction and supervision by ~~state water commission~~department of water resources - Independent functions retained by board.

The powers, functions, and duties of the board shall be administered under the direction and supervision of the ~~state water commission~~department of water resources. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the ~~commission~~department.

SECTION 3. AMENDMENT. Subdivision h of subsection 2 of section 61-04.1-16 of the North Dakota Century Code is amended and reenacted as follows:

- h. The applicant has furnished a bid bond ~~in accordance with section 61-04.1-35~~.

SECTION 4. REPEAL. Section 61-04.1-35 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 568

SENATE BILL NO. 2097

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to create and enact a new section to chapter 61-15 of the North Dakota Century Code, relating to wild and scenic river designations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-15 of the North Dakota Century Code is created and enacted as follows:

Wild and scenic rivers.

1. Before a political subdivision engages in meetings with federal agencies to have any waterbody in the state designated a wild, scenic, or recreational river under the Wild and Scenic Rivers Act [16 U.S.C. 1271, et seq.] the political subdivision must notify the:
 - a. Director of the department of water resources;
 - b. Director of the department of environmental quality;
 - c. Director of the game and fish department;
 - d. Director of the parks and recreation department;
 - e. Water resource board of any water resource district that would be impacted;
 - f. Director of the department of trust lands;
 - g. Director of the department of mineral resources;
 - h. County commission of any county impacted;
 - i. Legislators of any district impacted;
 - j. Grazing associations impacted; and
 - k. Public service commission.
2. Any written communications between the political subdivision and federal agencies regarding such designation must be copied to the list in subsection 1.
3. The county commission shall hold a public hearing regarding the potential designation.

4. The governor and the county commission of any county impacted must express written support before the state or a federal agency designates a wild, scenic, or recreational river under the Wild and Scenic Rivers Act.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 569

SENATE BILL NO. 2036

(Legislative Management)
(Water Drainage Committee)

AN ACT to create and enact twelve new sections to chapter 61-16.1 of the North Dakota Century Code, relating to water resource boards; to amend and reenact sections 21-06-07, 61-01-06, 61-05-02.1, 61-16.1-02, 61-16.1-09, 61-16.1-09.1, 61-16.1-15, 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23, 61-16.1-24, 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-42, 61-16.1-43, 61-16.1-51, and 61-16.1-54, and subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota Century Code, relating to water resource boards and procedures for assessment projects undertaken by water resource boards; and to repeal section 61-16.1-01 and chapter 61-21 of the North Dakota Century Code, relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

21-06-07. Political subdivisions may invest funds.

1. Counties, cities, school districts, park districts, water resource boards, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
 - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
 - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
 - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
 - d. Certificates of deposit, savings deposits, or other deposits fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate deposit placement service as determined by the commissioner of financial institutions.
 - e. State and local securities:
 - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.

- (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
 - (3) Any security that is a general obligation of a school district and is rated in the highest two categories by a nationally recognized rating agency.
 - (4) Obligations of this state and general obligations of its political subdivisions.
- f. Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash.

SECTION 2. AMENDMENT. Section 61-01-06 of the North Dakota Century Code is amended and reenacted as follows:

61-01-06. Watercourse and waterway - DefinitionDefinitions.

1. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. The supply of water is not required to be continuous or from a perennial living source. The criteria for constituting a watercourse are satisfied if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the department of water resources shall determine whether a watercourse is constituted.
2. For purposes of this title, unless the context otherwise requires, "waterway" means a natural, geologic feature that conveys surface water over land.

SECTION 3. AMENDMENT. Section 61-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.

Notwithstanding section 61-05-02, an irrigation district may not be created if the primary purpose of the district is to provide drainage benefits to residents of the district. A drainage project proposed, undertaken, approved, or subject to assessment by an irrigation district also is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an irrigation district may not impact the authority of a water resource board to assess for drainage projects under chapter 61-16.1 or 61-24.

SECTION 4. AMENDMENT. Section 61-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-02. Definitions.

InFor purposes of this chapter, unless the context or subject matter otherwise providesrequires:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.

2. ~~"Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which area drain financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.~~
3. "Benefited property" means property that has accrued a benefit from a project.
4. "Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.
5. "Cleaning out and repairing a drain" means deepening and widening a drain and removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
6. "Commission" means the state water commission.
- 4-7. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
- 5-8. "Costs of the frivolous complaint" means all reasonable costs associated with the requisite proceedings regarding the removal of obstructions to a drain, removal of a noncomplying dike or dam, or closing a noncomplying drain, including all reasonable construction costs; all reasonable attorney's fees and legal expenses; all reasonable engineering fees, including investigation and determination costs; compliance inspections; and necessary technical memorandum and deficiency review; and all costs associated with any hearing conducted by a district, including preparation and issuance of any findings of fact and any final closure order.
- 6-9. "District" means a water resource district.
- 7-10. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for drainage, and any artificial channel constructed for drainage. The term includes dikes and appurtenant works and may include more than one watercourse or artificial channel when the watercourses or channels drain land within a practical drainage area.
11. "Frivolous" means allegations and denials in any complaint filed with a district made without reasonable cause and not in good faith.
- 8-12. "Lateral drain" means a drain constructed after the establishment of an original drain or drainage system and which flows into the original drain or drainage system from outside the limits of the original drain.
13. "Practical drainage area" means, for assessment drains, the practical drainage area determined by the survey and examination required under section 61-16.1-17.
14. "Project" means any undertaking for water conservation; flood control; water supply; water delivery; erosion control and watershed improvement; drainage of surface waters; collection, processing, and treatment of sewage; or discharge of sewage effluent; or any combination thereof, ~~including of~~

purposes in this subsection, and includes incidental features of any such the undertaking.

9-15. "Water resource board" or "board" means the water resource district's board of managers.

SECTION 5. AMENDMENT. Section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09. Powers of water resource board.

Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain as follows:
 - a. Except as permitted under subdivision b, the board shall comply with title 32 for the purpose of acquiring and securing by eminent domain 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.
 - b. (1) If the interest sought to be acquired is an easement for a right of way for any project authorized in this chapter for which federal or state funds have been made available, the district may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:
 - (a) Conducting informal negotiations for not less than sixty days.
 - (b) If informal negotiations fail, the district shall engage in formal negotiations by:
 - [1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - [2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - [3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request

for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.

- (2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.
 - (3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the district may take immediate possession of the right of way, but not a blanket easement, if the district files an affidavit by the chairman of the water resource board which states the district has fulfilled the required negotiation steps and deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
 - (4) 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.
 - (5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
 4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every

nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, drains, or watercourses and the flow of water ~~therein~~ them by changing, widening, deepening, or straightening ~~the same~~, or otherwise improving ~~the use and capacity thereof~~; or by cleaning out and repairing a drain.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the ~~procedures and provisions~~requirements of this chapter 64-24.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.

17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.
18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.
19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The department of transportation, railroads, counties, and townships shall cooperate with the districts in this effort. Each

district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.

22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.
23. Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.
24. Establish, deepen, widen, and improve drains; and extend drains as necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area.
25. Install artificial subsurface drainage systems.

SECTION 6. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Right of way - How acquired - Assessment of damages - Issuance of warrants.

If lands assessed for drainage benefits are not contiguous to the drain, the water resource board may exercise eminent domain to acquire a right of way easement to the drain over the land of others. The right of way, when acquired, is the property of the water resource district in which the lands are located. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer which have been collected for the construction of the drain for which the right of way is sought.

SECTION 7. AMENDMENT. Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09.1. Watercourses, bridges, and low-water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisement of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section ~~61-16.1-17~~61-16.1-18. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be resolved by the department of water resources. All provisions of this chapter apply to assessments levied under this section except:
 - a. An assessment may not exceed fifty cents per acre [40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; ~~and.~~

- b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
- (1) If a board that undertakes a project finds the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
 - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
 - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

SECTION 8. AMENDMENT. Section 61-16.1-15 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-15. ~~Financing project~~Initiating project financed through revenue bonds, general taxes, or special assessments - ~~Apportionment of benefits~~Bond required.

A water resource board ~~shall have the authority~~, either upon request or by its own motion, ~~to may~~ acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special~~

~~assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments, the water resource board shall carry out to the maximum extent possible the water management policy of this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters. A request under this section must be in writing and be accompanied by a bond in a sum the water resource board deems sufficient to pay all expenses of the board related to the petition in case the petition is denied. If the proposed project is an assessment drain, the request must identify the starting point, terminus, and general course of the proposed drain and be signed by at least two owners of property that would be drained by the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the residents of any city, the petition must be signed by a sufficient number of the property owners of the city to satisfy the board there is a public demand for the drain. If a petition under this section is approved by voters under section 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay any expenses incurred by the board related to the petition.~~

SECTION 9. AMENDMENT. Section 61-16.1-17 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-17. ~~Financing of special improvements~~Assessment projects - Procedure - Engineer report.

~~When it is proposed to finance in whole or in part the construction of a project with a water resource board receives a petition or approves a motion to construct a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the water resource board shall examine the proposed project, and if in its opinion, if the water resource board decides further proceedings are warranted, itthe board shall adopt a resolution and declare that itdeclaring constructing and maintaining the proposed project is necessary to construct and maintain the project. The resolution shall briefly state, identifying the nature and purpose of the proposed project, and shall designate designating a registered engineer to assist the board. As soon as practicable, the board shall publish the resolution in the newspaper of general circulation in each area in which lands that reasonably may be condemned or subject to assessment for the project are located. For the purpose of making examinations or surveys, the board or its employees the board's agents, after written notice to each landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications, and total estimated costs of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall must include acquisition of rightthe cost to acquire rights of way and shall be in sufficient detail to allow be sufficiently detailed for the board to determine the probable share of the total costs that will to be assessed against each of the affected landowners in the proposed project assessment district.~~

SECTION 10. AMENDMENT. Section 61-16.1-18 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-18. Hearing on assessment project - Notice - Contents.

1. 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 a public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project.
2. 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~~would be benefited by the improvement~~proposed project;~~ 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 the filing must be included in the notice of hearing. Notices to each parcel.~~
3. The water resource board shall provide notice of the hearing which must contain:
 - a. Include a copy of the petition, if any, and the resolution of the board as well as;
 - b. Specify the time and place where the board will conduct~~of the hearing.~~ The notice of hearing must specify the general nature;
 - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board. ~~The notice of hearing must also specify;~~
 - d. Specify when and where votes concerning the proposed project may be filed. ~~The ;~~
 - e. Include the 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, along with a copy of the notice of the hearing, must be~~to each parcel;~~
 - f. Be mailed with a ballot to vote on the proposed project to each affected landowner at the landowner's address as shown by the tax rolls of the county ~~or counties~~ in which the affected property is located. The board may send the assessment list and notice and ballot by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be; and
 - g. 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.
4. The date set for the hearing must not be less ~~than~~at least twenty days after the mailing ~~of the notice~~day the notice is mailed. A record of the hearing must be made by the board, ~~including~~include a list of affected landowners present

in person or by agent, and ~~the record must be preserved in the minutes of the meeting. Affected landowners.~~ Each affected landowner and the governing body of any county, township, or city to be assessed; must be informed at the hearing of the probable total cost of the project ~~and their individual share.~~ the share of the cost the landowner or governing body will be assessed, and the portion of ~~their landowner or governing body's~~ property, if any, to be condemned for the project.

SECTION 11. AMENDMENT. Section 61-16.1-19 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-19. Voting on proposed projects - Notice of result.

At the hearing on an assessment project, the affected landowners, and any county, township, or city to be assessed, must also be informed when and where votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes for or against the project with the secretary of the water resource board ~~concerning the project.~~ If a vote is mailed to the secretary, the vote is timely if the vote is received within the voting period. During the voting period, ballots may not be opened and votes may not be counted. Once the deadline for filing votes has been reached, ~~no more votes may be filed and no person may withdraw a vote.~~ votes may not be filed or withdrawn. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When ~~the votes have been filed and the deadline for filing votes has passed,~~ the board immediately shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, ~~then the vote constitutes a bar against proceeding further with the project.~~ If the 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~~ may 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~~ both. ~~In projects in which~~ If there is an agreement that for a party other than the board ~~will to~~ let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing a project or ~~denying establishment of~~ determining the vote bars establishing a project, the board shall publish notice of the order or determination 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.~~ The notice must advise affected landowners of their right to appeal. Any right of appeal begins to run on the date of publication of the notice. ~~As used in this section, "board" means water resource board.~~

SECTION 12. AMENDMENT. Section 61-16.1-20 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-20. Voting right or powers of landowners.

~~In order that there may be~~ The allocation of voting rights among affected landowners on the question of establishing a proposed project must provide a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of ~~a proposed~~ the project, ~~the voting rights of affected~~

landowners on the question of establishing the project are as provided in this section. ~~The landowner or landowners of tracts of land affected by the project. Affected landowners have one vote for each dollar of assessment that to which the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed also has one vote for each dollar of assessment against such the county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of such a tract of land. Whereif there is more than one owner of such the land exists, the votes must be prorated among them the owners in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any the affected landowner or landowners that executed the power of attorney.~~

SECTION 13. AMENDMENT. Section 61-16.1-21 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-21. Assessment of cost of project Calculating benefits and assessments - Certification.

Whenever

1. ~~If the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to before the hearing required under section 61-16.1-18, shall inspect any and all lots and parcels of land, which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and. The board shall assess determine the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement the project in accordance with, but not exceeding, the benefits received but not exceeding such benefits, against:~~
 1. Any any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.
 2. Any and any lot, piece, or parcel of land which is directly benefited by such improvement the project.
2. In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, and productivity, ~~and the water management policy as expressed in section 61-16.1-15. Property belonging to the United States shall be is exempt from such assessment under this chapter, unless the United States has provided for the payment of any assessment which may be levied against it the property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be is not exempt from such assessment under this chapter, and political subdivisions whose property is so assessed shall provide for the payment of such the assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such the assessments, installments thereof, and interest thereon from its the political subdivision's general fund or by levy of a general property tax against all the taxable property therein in the political subdivision in accordance with law. No tax limitation Tax limitations provided by any statute of this state shall do not apply to tax levies made by any such a political subdivision for the purpose of paying any special assessments made in accordance with the~~

~~provisions of~~ under this chapter. There shall be attached to the list of assessments a

3. The board shall prepare a list identifying the assessments allocated to each lot and parcel of land for the project. A certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein must be attached to the list and state the assessment in the list are based on a correct determination of the benefits to the assessed land described to the best of the members' judgment and stating. The certificate also must identify the several items of expense included in the assessment.

SECTION 14. AMENDMENT. Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

1. After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for three successive 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 together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. provide notice of a hearing at which the board will meet to hear objections to the proposed assessments from any interested party or agent for an interested party. The notice must:
 - a. Include a copy of the order establishing the project;
 - b. Specify the time and place of the hearing;
 - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board;
 - d. Include the 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;
 - e. Be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board; and
 - f. Be published once a week for two consecutive weeks in the newspaper of general circulation in the area in which the affected lands are located.
2. The date set for the hearing may not must be less than thirty at least twenty days after the mailing of the notice is mailed. At the hearing, the board may make such alterations in alter the assessments as in its opinion may be the board deems just and necessary to correct any error in the assessment but

~~must~~ shall make the aggregate of all assessments equal to ~~either~~ the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board ~~then~~ shall ~~then~~ confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate ~~that the same~~ stating the list is correct as confirmed by the board and shall file the list in the office of the secretary.

SECTION 15. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-23. Appeal to department of water resources.

~~After~~ Within twenty days after the hearing provided for in meeting at which the water resource board approves the final assessment list required under section 61-16.1-22, affected:

1. Affected landowners and any political subdivision subject to assessment, having not less than ~~twentythree~~ thirty-three percent of the possible votes as determined by section 61-16.1-20, ~~who~~ which believe the assessment was not made fairly or equitably or the project is not located or designed properly, may appeal to the department of water resources 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 the petition the department shall examine the lands assessed and the location and design of the proposed project, and if it appears the assessments were not made equitably, the department may correct the assessments, and the department's correction and adjustment of the assessment is final. If the department believes the project was located or designed improperly, the department may order a relocation and redesign that must be followed in the construction of the proposed project.
2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the department in the matter, any landowner or political subdivision claiming the landowner or political subdivision will receive no benefit from the construction of a new project may appeal that issue to the department ~~within ten days after the hearing on assessments.~~ Upon an appeal by an individual landowner or political subdivision, the department may determine whether there is any benefit to the landowner or political subdivision, but not the specific amount of benefit. The determination of the department regarding whether there is a benefit is final.
3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation. Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section.

SECTION 16. AMENDMENT. Section 61-16.1-24 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-24. When assessments may be made - Prohibition on certain contracts.

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the water resource board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as ~~they~~the costs have been ascertained. The certificate ~~shall~~must include the estimated construction cost under the terms of any contract, ~~for the project;~~ a reasonable allowance for the cost of extra work ~~which~~that may be authorized under the plans and specifications; ~~acquisition of right of way;~~ engineering, fiscal agents' and attorney's fees for ~~any~~ services in connection with the authorization and financing of the ~~improvement,~~project; cost of publication of required notices, ~~and;~~ printing of improvement warrants; ~~cost necessarily paid for damages caused by such~~the improvement; ~~interest during the construction period;~~ and all expenses incurred in making the improvement and levy of assessments.

~~In no event shall any contract or contracts be awarded which exceed~~A contract that exceeds, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners is prohibited.

SECTION 17. AMENDMENT. Section 61-16.1-26 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-26. Reassessment of benefits.

~~The~~A water resource board may hold at any time or, upon petition of any affected landowner or assessed 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 to determine~~ the benefits of ~~such~~the project to each tract of land affected. Notice of the hearing must be given by publication once each week for three consecutive weeks, beginning at least thirty days before the hearing, 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 of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each owner of land in the assessed district at the landowner's address as shown by the tax rolls of the counties in which the affected property is located. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. ~~The board may not be forced to make such~~Regardless of the number of petitions received, the board is not required to conduct a reassessment more than once every ten years, nor may any. An assessment or balance thereof supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of ~~such~~the fund remain unpaid and moneys are not available in ~~such~~the fund to pay all ~~such~~the bonds in full, with interest. Costs of maintenance must be prorated in accordance with any adopted plan for reassessment of benefits ~~that has been adopted~~.

SECTION 18. AMENDMENT. Section 61-16.1-27 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-27. Correction of errors and mistakes in special assessments - Requirements governing.

If mathematical errors or other ~~such~~ mistakes occur in making any assessment resulting and result in a deficiency in that assessment, the board shall cause

additional assessments to be made in a manner substantially complying with chapter 40-26 as ~~the chapter~~ relates to special assessments.

SECTION 19. AMENDMENT. Section 61-16.1-28 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-28. Certification of assessments to county auditor.

When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments ~~shall must bear, which. The interest rate shall may~~ not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments ~~shall must~~ commence on the date the assessments are ~~finally confirmed finally~~ by the board. Special assessments may be certified and made payable in equal annual installments, the last of which ~~shall must~~ be due and payable not more than thirty years after the date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to ~~such the~~ special assessments are situated, the total amount assessed against ~~such~~ lands in that county and the proportion or percentage of ~~such the~~ amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district ~~also~~ shall ~~also~~ file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part ~~thereof of the cost~~, if any, ~~which will to~~ be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining ~~projects the project~~ in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the ~~eests shall be prorated board shall prorate costs~~ in accordance with the reassessment of benefits as authorized by ~~section 61-16.1-54~~.

SECTION 20. AMENDMENT. Section 61-16.1-42 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-42. Drains along and across public roads and railroads.

1. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of ~~such the~~ road. ~~In instances where it is if, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a highway, the water resource board shall notify and solicit guidance from the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, as soon as practicable. If the water resource board determines the drain must be run across the highway after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts or bridges must be allocated as provided under section 61-16.1-43. In instances where drains are laid along or within the rights of way~~

of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned.

2. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, if, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a railroad, the water resource board shall notify and solicit guidance from the railroad company as soon as practicable. If the water resource board determines the drain must be run across the railroad after considering any guidance received from the railroad company, the railroad company, when notified by the water resource board to do so of the water resource board's determination, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

SECTION 21. AMENDMENT. Section 61-16.1-43 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-43. Construction of bridges and culverts - Costs.

1. The water resource board shall construct ~~such~~any bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by ~~such~~the drain. The cost of ~~such construction shall~~constructing the bridge or culvert must be charged as part of the cost of constructing the drain, ~~and any such. The bridge, or culvert, or passageway shall~~ must be maintained under the authority of the water resource board, and the necessary expense ~~shall~~must be deemed a part of the cost of maintenance.

Whenever

2. When any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the water resource board shall notify the county or township with authority for the highway and provide the county or township reasonable time to review and provide input on the plans for the bridge or culvert. The bridge or culvert must be maintained by the county or township and all necessary maintenance expenses must be borne forty percent by the county and sixty percent by the water resource board, unless otherwise agreed upon by the water resource board and the highway authority. If the highway authority and the water resource board cannot agree on the necessity or proper methodology for maintaining the bridge or culvert, the requesting party may appeal the denial under chapter 28-34. The cost of constructing ~~such~~the bridge or culvert shallmust be shared in the following manner:
 1. a. ~~The~~ funds are available, the state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe according to the commission's rules or policies. The remaining cost shall must be borne forty percent by the county and sixty percent by the district ~~which has~~that created the need for ~~such~~the construction.
 2. b. If, however, moneys have not been made ~~funds are not~~ available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shallmust be paid by the county

and sixty percent shall ~~must~~ be charged as the cost of the drain to the district.

~~3. Where such bridges or culverts are~~

- ~~c. Upon request from the water resource board, the county shall request federal emergency funds for the construction. If the bridge or culvert is constructed with federal financial participation, including any federal emergency funds, the costs exceeding the amount of the federal participation shall ~~must~~ be borne by the district and county according to the provisions of this section, as the case may be.~~

SECTION 22. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Assessment drain culverts.

If, during the preparation of the report required under section 61-16.1-17 or during the planning for maintenance or reconstruction of an existing assessment drain, a water resource board discovers it may be necessary to install a culvert through a road not on the route of the assessment drain, but which is within the assessment area and necessary for surface water to reach the assessment drain, the water resource board shall notify and solicit guidance from the department of transportation, board of county commissioners, or board of township supervisors, as the case may be, as soon as practicable. If the water resource board determines the culvert is necessary after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts must be allocated as provided under section 61-16.1-43.

SECTION 23. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition.

1. If a water resource board determines that an obstruction to a drain has been caused by the result of a natural occurrence, such as sedimentation or vegetation, or by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice also must ~~also~~ be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction; and the opinion of the board as to its cause, and must state ~~that~~ if the obstruction is not removed within ~~sue~~the period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice also must ~~also~~ state ~~that~~ the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may apply immediately ~~apply~~ to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an

obstruction. Assessments levied under the provisions of this section must 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. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in under this section is not a prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

2. For the purposes of this section, "an obstruction to a drain" means a natural or artificial barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, ~~which that~~ materially affects the free flow of waters in the watercourse or drain.
3. Following removal of an obstruction to a drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

SECTION 24. AMENDMENT. Section 61-16.1-54 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction.

~~An appeal may be taken to the district court from any~~An aggrieved person may appeal an order or decision of ~~the~~ water resource board ~~by any person aggrieved to the district court of the county in which the land claimed to be affected adversely by the order or decision is located.~~ An appellant shall file an undertaking in the sum of two hundred dollars with ~~such~~any sureties ~~as may be approved~~required by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned ~~that the appellant will prosecute on the appellant prosecuting~~ the appeal without delay and ~~will pay~~paying all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. ~~The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and~~An appeal under this section is governed by the procedure provided in section 28-34-01.

SECTION 25. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Designation of lateral drain.

A determination by a water resource board as to whether an existing or proposed drain is a lateral drain is a conclusive determination when entered on the records of the board.

SECTION 26. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Notice of letting of contracts.

After the recording of percentage assessments as provided in section 61-16.1-22, the board shall give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. The notice must be published at least once in a newspaper having general circulation in the county.

SECTION 27. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Extension of time to contractors - Reletting unfinished part of contract.

A water resource board may grant a reasonable extension of time for the completion of any contract. If a board reasonably believes the work required under a contract will not be completed by the agreed upon deadline, the board may relet any unfinished portion to the lowest responsible bidder, and shall take security as before. The cost of completing the unfinished portions over and above the contract price, and the expense of notices and reletting, must be collected by the board from the parties first contracting. The board may not terminate a contract without giving five days' notice to the contractor, provided the contractor may be found or has a known place of residence in the county. The notice may be given to the contractor personally or may be left at the contractor's place of residence.

SECTION 28. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Procedure to construct or extend an assessment drain through or into two or more counties.

To construct or extend an assessment drain in two or more counties, a petition must be presented to the several water resource boards for the area in which the drain will lie for the establishment of the drain under this chapter. The boards shall hold a joint meeting and shall determine the necessity or expediency of the establishment of the drain. To proceed with the drain, the boards shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose the boards shall consider the entire course of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to accrue to the lands in each county, the boards shall submit the points in controversy to the department of water resources, and the department's decision is final. The boards may apportion the cost of establishing and constructing the entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue to the county's lands. When the boards have apportioned the costs, the boards shall make written reports of the apportionment to the auditors of the several counties affected. The reports must show the portion of cost of the entire drain to be paid by taxes upon the lands in each of the counties and must be signed by the boards of all counties affected. Upon the filing of the reports, the several boards shall meet and assess against the lands in each of the counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The provisions of this chapter relating to drains within a single county govern the establishment, construction, maintenance, repair, and cleanout of the drains.

SECTION 29. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Drain warrants - Terms and amounts.

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection with the acquisition or construction, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-16.1-28, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

SECTION 30. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Settlement of unpaid warrants.

A board of county commissioners may negotiate and execute a settlement with the owners of drain warrants and pay the amount of the settlement from the general fund of the county if:

1. Drain warrants issued pursuant to the establishment of a drain in two or more counties remain unpaid;
2. The amounts realized from the original assessments are not sufficient to pay the warrants;
3. An additional assessment would be necessary to meet the deficit; and
4. The board finds the county has received benefits from the drain by reasons of public health, convenience, or welfare and, as a result, may be liable for assessment or reassessment and the credit of the county is or may be affected by the existence of the outstanding and unpaid warrants.

SECTION 31. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.

If the board determines a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by

the board, the board shall notify the landowner by registered mail at the landowner's address of record. A copy of the notice also must be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board determines, against the property of the landowner responsible. The notice also must state the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may apply immediately to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must 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. A landowner aggrieved by action of the board under 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 in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

SECTION 32. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Reconveyance of land no longer required for drainage.

When land acquired for drainage is no longer required for drainage, the board of county commissioners may reconvey the land to the present owner of the adjacent property if the present owner of the adjacent property surrenders all warrants issued in payment of the land or repays the amount of cash paid for the land.

SECTION 33. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Sinking funds and bonds.

A water resource board shall establish a sinking fund for each issue of bonds, and the fund must consist of all drain assessments made for the bonds, all warrants funded, all assessments for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys that may be appropriated to the sinking fund. Separate sinking funds must be provided for each separate drain for which bonds have been issued. Until the purpose of the sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose other than payment of the bonds for which the fund was created.

SECTION 34. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Existing obligations and regulations.

Except as specified, amendments to this chapter do not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts, and all sinking funds created for the payment of these obligations continue in force until the liquidation of the obligations. All valid rules adopted by any board of county

commissioners or board of drainage commissioners remain in full force and effect until altered or repealed by the board.

³²⁰ **SECTION 35. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- g. If the subsurface water management system will discharge into the watershed area of an assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district may include the new property into the assessment district, and determine the benefits and assessment amounts under ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment of benefit proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided the property is not assessed already for the assessment drain.

SECTION 36. REPEAL. Section 61-16.1-01 and chapter 61-21 of the North Dakota Century Code are repealed.

Approved April 12, 2023

Filed April 13, 2023

³²⁰ Section 61-32-03.1 was also amended by section 25 of House Bill No. 1038, chapter 65.

CHAPTER 570

HOUSE BILL NO. 1391

(Representatives Schatz, Bellew, Dockter, Hauck, VanWinkle)
(Senators Boehm, Luick, Paulson)

AN ACT to amend and reenact section 61-16.1-04 of the North Dakota Century Code, relating to the publication and distribution of water resource board meeting minutes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-04 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-04. Minutes, books, and records.

The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. The unofficial minutes of the meeting must be provided to the official newspaper of the county for publication or, if applicable, posted to the water resource board's website or the official county website within ten days. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

Approved April 29, 2023

Filed May 1, 2023

CHAPTER 571

SENATE BILL NO. 2372

(Senators Lemm, Luick)

AN ACT to create and enact a new subsection to section 61-16.1-11 and section 61-16.1-15.1 of the North Dakota Century Code, relating to joint water resource boards and the construction of a water project in more than one county; and to amend and reenact section 61-16.1-12.1 of the North Dakota Century Code, relating to joint water resource boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

321 SECTION 1. A new subsection to section 61-16.1-11 of the North Dakota Century Code is created and enacted as follows:

All districts within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall, by agreement, form and remain a member of a joint water resource board relative to the district's respective drainage basin. All agreements and subsequent amendments must be filed with the department of water resources. Notwithstanding other provisions of law, the board of county commissioners of the member districts in the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall approve a levy of tax not to exceed two mills upon the taxable valuation of the real property within each joint board's respective drainage basin.

SECTION 2. AMENDMENT. Section 61-16.1-12.1 of the North Dakota Century Code is amended and reenacted 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 that~~ 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 that~~ 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

³²¹ Section 61-16.1-11 was also amended by section 52 of Senate Bill No. 2015, chapter 47. The North Dakota Supreme Court declared Senate Bill No. 2015 void in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly*, by judgment filed October 12, 2023.

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 that 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 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 also must ~~also~~ set forth the time and place where the board shall meet to determine whether the project is approved. The notice must also be published once in a newspaper 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 mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, school district, park district, or other political subdivision, 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 mailing of the resolution, at which time the board shall determine whether the project is approved. If the board finds 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. ~~The provisions of sections~~ Sections 61-16.1-25 through 61-16.1-36 ~~are applicable~~ apply to the assessments and the special warrants issued pursuant to this section.

SECTION 3. Section 61-16.1-15.1 of the North Dakota Century Code is created and enacted as follows:

Projects or benefits in more than one county.

1. The districts from two or more counties may agree to jointly construct or assign benefits and assessments for a project. Two or more districts shall create a joint board under section 61-16.1-11 before constructing a project and before assessing the lands or premises for a project that benefits or is located in more than one county. If the districts do not agree to undertake a joint project, a district may undertake the project by providing notice to the joint board where the project is located, in either the Red River, James River, Mouse River, Missouri River, or Devils Lake drainage basin, together with the engineer's report required under section 61-16.1-17.

2. If the joint board finds the project is necessary, and the benefits of the project will exceed the costs, the joint board shall proceed with the procedures in sections 61-16.1-15 through 61-16.1-36 regarding:
 - a. The creation, construction, alteration, repair, operation, and maintenance of a project and an assessment district;
 - b. The determination and levy of assessments against property benefited by the project; and
 - c. The special warrants issued pursuant to this chapter.
3. If the assessment vote is successful, the joint board shall construct, own, operate, and maintain the project. The joint board shall administer the corresponding assessment district for the project in accordance with this chapter.

Approved April 20, 2023

Filed April 21, 2023

CHAPTER 572

HOUSE BILL NO. 1076

(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.

~~No dikes~~Dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or water storage of water which ~~are~~must be constructed in accordance with this chapter. A permit is required from the department for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or; a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water for a ~~medium-hazard or high hazard dam, may be constructed within any district except in accordance with the provisions of this chapter; an agricultural dike capable of protecting more than eighty acres [32.37 hectares] of land area; or any dike capable of protecting an occupied residence or structure or public infrastructure. A~~A permit application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented firstsubmitted to the department of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height or, agricultural dikes less than two feet [0.61 meters] in height, or a farmstead ring dike, the plans and specifications must be completed by a professional engineer. The professional engineer must be registered in this state. After receipt, ~~the~~The department shall consider the application in such detail as the department deems necessary and proper. The department shall refuse to allow the construction of any unsafe or improper dike, dam, or other device ~~which that~~ would interfere with the orderly control of the water resources of the district, or may order changes, conditions, or modifications as in the judgment of the department~~department's judgment~~ may be necessary for safety or the protection of property. Within forty-five days after application receipt of ~~the~~application, except in unique or complex situations, the department shall complete the initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board shall consider the application within forty-five days, and suggest any changes, conditions, or modifications to the department. If the board approves the application, the board shall forward the approved application to the department. If the board fails to respond within forty-five days, the board will be deemed to have no changes, conditions, or modifications to make. The department shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The department may issue temporary permits for dikes, dams,

or other devices in cases of an emergency. Any person constructing a dam, dike, or other device ~~capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam,~~ without first securing a necessary permit ~~to do so~~, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

Approved March 29, 2023

Filed March 30, 2023

CHAPTER 573

HOUSE BILL NO. 1098

(Political Subdivisions Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 2 of section 61-16.2-09 of the North Dakota Century Code, relating to the enforcement and penalties of communities that fail to adopt or enforce floodplain management ordinances as required under the national flood insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief under the national flood insurance program [42 U.S.C. 4001 et seq.] relating to insurable structures located within federal emergency management agency-identified special flood hazard areas.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 574

SENATE BILL NO. 2364

(Senators Klein, Luick, Sorvaag)
(Representatives Nelson, Weisz)

AN ACT to create and enact a new section to chapter 61-24 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District and permanent easements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-24 of the North Dakota Century Code is created and enacted as follows:

Permanent easements - Limitations.

The district's use of the permanent easement property is restricted solely to the construction, operation, and maintenance of facilities authorized by law. The district may not rent, sell, or assign the rights to a permanent easement, except may reserve the right to assign the permanent easement to the state of North Dakota if necessary for the operation and maintenance of a public water pipeline. If the district ceases operation, all permanent easements must be transferred to the public water system receiving a beneficial use from the water pipelines and other facilities. If no public water system exists, all permanent easements must transfer to the state. The state or public water system shall assume full responsibility for all easement activities and responsibilities, including any environmental remediation obligations.

Approved April 12, 2023

Filed April 13, 2023

CHAPTER 575

HOUSE BILL NO. 1218

(Representatives Nelson, D. Anderson, Davis, M. Ruby)
(Senators Sorvaag, Vedaa)

AN ACT to amend and reenact sections 61-24.6-02, 61-24.6-03, 61-24.6-04, and 61-24.6-06 of the North Dakota Century Code, relating to the creation of the northwest area water supply authority; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-02. Northwest area water supply advisory committee authority - Created.

The northwest area water supply advisory committee authority consists of the following representatives; who, except for the members elected under subsection 5, are appointed by the director of the department of water resources state water commission:

1. One person Four representatives from the city of Minot recommended by the Minot city council.
2. One representative from the North Prairie regional water district.
3. One person from the Bottineau, Burke, McHenry, McLean, Pierce, Renville, and Ward County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, McHenry, McLean, Pierce, Renville, and Ward County water resource districts representative of all seasons water users district recommended by the all seasons users district board of directors.
- 3-4. One representative of the state water commission recommended by the commission upper Souris water district recommended by the upper Souris water district board of directors.
- 4-5. One representative of the Turtle Mountain Band of Chippewa Indians recommended by the tribal council who will serve as a nonvoting member One representative of cities other than the city of Minot, with direct water service from the northwest area water supply project to be selected by election by cities during the annual meeting of the North Dakota league of cities.
- 5-6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, McHenry, McLean, Pierce, Renville, or Ward County the state water commission who resides in the Souris River basin recommended by the state water commission.

- ~~6-7.~~ One representative of a municipality other than the city of Minot, located in Bottineau, Burke, McHenry, McLean, Pierce, Renville, or Ward County the Garrison Diversion Conservancy District recommended by the Garrison Diversion Conservancy District board of directors who serves as a nonvoting member.
- ~~7-8.~~ One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district Turtle Mountain Band of Chippewa Indians recommended by the tribal council who will serve as a nonvoting member.
8. One at-large representative.

SECTION 2. AMENDMENT. Section 61-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-03. Advisory committee Northwest area water supply authority - Duty - Officers - Meetings - Compensation - Staffing.

The northwest area water supply ~~advisory committee~~ authority shall develop recommendations for the legislative management regarding the transition of long-term operations and management of the northwest area water supply project. The members of the authority shall serve four-year terms. The ~~advisory committee~~ authority shall elect a chairman and vice chairman and meet no less often than once per quarter at the times and places necessary to carry out the purposes of this chapter. The ~~advisory committee~~ authority members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The ~~advisory committee~~ authority members serve at the pleasure of the ~~director of the department of water resources~~ state water commission. Vacancies must be filled in the same manner as original appointments are made. The ~~state water commission~~ department of water resources shall provide staffing and support for the ~~advisory committee~~ authority.

SECTION 3. AMENDMENT. Section 61-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-04. Powers of the state water commission in consultation with the northwest area water supply advisory committee authority.

The state water commission shall consult with the northwest area water supply ~~advisory committee~~ authority regarding the following duties of the commission:

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

4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this chapter.
5. Construct, operate, and manage a project to deliver water throughout the project area.

SECTION 4. AMENDMENT. Section 61-24.6-06 of the North Dakota Century Code is amended and reenacted as follows:

61-24.6-06. Commission to fix water rates for the northwest area water supply project.

The state water commission, after consulting with the northwest area water supply ~~advisory committee~~ authority, shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 61-24.6-07, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of the reserve fund for replacement must be determined by the commission.

SECTION 5. APPLICATION. Notwithstanding section 60-24.6-03, the terms of the initial members of the northwest area water supply authority may be for a period of less than four years in order to initiate staggered terms.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 576

HOUSE BILL NO. 1239

(Representatives Schreiber-Beck, Beltz, D. Johnson, Pyle, Thomas)
(Senators Klein, Sorvaag)

AN ACT to create and enact a new section to chapter 61-32 of the North Dakota Century Code, relating to smaller subsurface water management systems; 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 61-32 of the North Dakota Century Code is created and enacted as follows:

Smaller subsurface water management systems - Notification and conditions - Penalty.

1. A person may not install a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area until the person has notified the board of the water resource district within which is found a majority of the land area of the system of the following information:
 - a. The system's total acreage and legal description of the land being drained;
 - b. The outlet locations and types; and
 - c. The flow direction from each outlet location.
2. A person required to notify the board under subsection 1 shall install the subsurface water management system such that:
 - a. Pump and control structures at pump outlets are installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;
 - b. Proper erosion controls are installed and maintained at all outlets; and
 - c. Pumps and control structures at project outlets are closed or turned off during critical flood periods.
3. If a subsurface water management system for which notification is required under subsection 1 will discharge into the watershed area of an assessment drain, the water resource board that receives the notice may require the relevant property to be included in the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district also may include the property in the assessment district and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.

4. The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.
5. A person that violates this section is guilty of an infraction.
6. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.
7. This section does not apply to a subsurface water management system that discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system.
8. The information that must be provided to a board of a water resource district under this section is an exempt record under section 44-04-18.

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

Approved April 27, 2023

Filed April 28, 2023

CHAPTER 577

SENATE BILL NO. 2196

(Senators Patten, Beard, Bekkedahl, Kannianen)
(Representatives J. Olson, Richter)

AN ACT to create and enact two new sections to chapter 61-40 of the North Dakota Century Code, relating to the infrastructure revolving loan fund and accrued and unpaid interest in western area water supply authority loans; to amend and reenact subsection 13 of section 61-40-05, and sections 61-40-09, 61-40-10, and 61-40-11 of the North Dakota Century Code, relating to the oversight of the western area water supply authority and infrastructure revolving loan fund payments; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrialstate water commission and the emergency commission.

SECTION 2. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

61-40-09. Default.

~~The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 61-40-10, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due if the western area water supply authority defaults on its payment of the principal or interest on the infrastructure revolving loan provided for in section 5 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.~~

SECTION 3. AMENDMENT. Section 61-40-10 of the North Dakota Century Code is amended and reenacted as follows:

61-40-10. Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the ~~industrial~~state water commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
 - a. ~~One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this section.~~
 - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
 - e-b. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
 - e-c. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
 - e-d. Additional principal payment on state-guaranteed loans.
 - f.e. Payment to the resources trust fund.
2. If the ~~state-guaranteed loans have~~debt has not been repaid, without the written consent of the ~~industrial~~state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
3. ~~The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after July 1, 2013~~western area water supply authority shall make additional payments on the infrastructure revolving fund loan, authorized in section 5 of this Act, in any month in which the debt service coverage ratio exceeds one and one-tenth. Debt service coverage ratio means net income before capital expenditures, interest expense, and depreciation expense divided by the sum of interest expenses and the required principal and interest payment.

SECTION 4. AMENDMENT. Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

61-40-11. Water rates.

~~The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.~~

SECTION 5. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority - Bank of North Dakota loan - Transfer.

The Bank of North Dakota shall transfer the outstanding principal balance of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws to the infrastructure revolving loan fund, on August 1, 2023. Any accrued and unpaid interest of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws must be consolidated with the principal balance of the loan transferred to the infrastructure revolving loan fund. The loan must have an interest rate of two percent and a final maturity date not to extend beyond July 1, 2053.

SECTION 6. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority accrued and unpaid interest.

All accrued and unpaid interest on the twenty-five million dollar loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws must be transferred to the general fund. All accrued and unpaid interest on the ten million dollar, twenty million dollar, and nineteen million five hundred thousand dollar loans from the resources trust fund to the western area water supply authority must be forgiven.

SECTION 7. APPROPRIATION - DEPARTMENT OF WATER RESOURCES - RESOURCES TRUST FUND. There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the department of water resources for the purpose of paying accrued and unpaid interest on the \$25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 29, 2023

Filed May 1, 2023