

WATERS

CHAPTER 375

S. B. No. 302

(Morgan, Bopp, Fiedler, Gronvold)

DIRECTORS OF GARRISON DIVERSION CONSERVANCY DISTRICT

AN ACT

Relating to election and filling vacancies of directors for Garrison Diversion Conservancy District.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Filling Vacancy on General Election Ballot.) Whenever a vacancy exists on a general election no-party ballot for any directorship of the Garrison Diversion Conservancy District, such vacancy may be filled by filing with the county auditor at least thirty days prior to the general election a petition substantially in the form provided in section 61-24-03 of the North Dakota Century Code, stating that the petitioner desires to become a candidate for election to the office of director. This petition must contain the signatures of not less than fifty qualified electors of the county, unless there were at least fifty write-in or sticker votes for the petitioner cast in the no-party primary election for such office.

A vacancy in the no-party ballot shall be deemed to exist when no candidate is nominated at the primary election or when a candidate nominated at the primary shall die, resign, or otherwise become disqualified to have his name printed on the ballot at the general election.

Approved March 4, 1961.

CHAPTER 376

H. B. No. 582

(Haugland, Anderson of McHenry, Alme, Backes, Berg, Hauf,)
(Christensen of Ward, Fossum, Balerud, Kelly, Link, Loftesnes,)
(Maragos, Ostrem, Saugstad, Solberg, Vinje, Wolf)

MOUSE RIVER

AN ACT

To establish the name "Mouse" as the official name for the river herein described.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Declaration of Legislative Intent.) Whereas, throughout the past years and continuing to this day there exists a great amount of conflict and confusion, both within this state and without, as to the true name of that body of water described in section two of this Act and whereas numerous residents of communities located upon said body of water have expressed the desire that such conflict be resolved, it is the will of the legislative assembly that an official name be designated.

§ 2. "Mouse" Official Name of River.) That body of water which enters the state in or adjacent to that township described as township one hundred sixty-four, north, range eighty-seven, west, in the county of Renville, and proceeds in a generally southerly course through the city of Minot, thence in a generally easterly and northerly course through the cities of Velva and Towner to a point in or adjacent to that township described as township one hundred sixty-four, north, range seventy-nine, west, in the county of Bottineau, at which point it leaves the state of North Dakota, shall be known as the "Mouse" river. Nothing herein shall be considered as invalidating any national or international agreements designating the river as the Souris.

Approved March 15, 1961.

CHAPTER 377

S. B. No. 130

(Trenbeath)

WATER SURVEYS OR PROJECTS

AN ACT

Relating to moneys paid to the state water conservation commission by a municipality or political subdivision of the state to cover its part of the cost of a water survey or water project shared with the commission on a matching basis.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Moneys Paid to the State Water Conservation Commission To Be Deposited with the State Treasurer.) Moneys paid to the state water conservation commission by a municipal corporation or by a political subdivision of the state to meet its part of the cost of a water survey or water project, shared with the commission on a matching basis, shall be deposited with the state treasurer and shall be credited to the fund out of which the cost of such water survey or water project is paid.

Approved February 25, 1961.

CHAPTER 378

S. B. No. 151

(Morgan, Gronvold, Garaas,
(Bopp, Trenbeath)

APPROPRIATION FOR BENEFICIAL USE

AN ACT

To amend and reenact sections 61-04-02, 61-04-04, 61-04-06, 61-04-09, 61-04-11, and 61-04-14 of the North Dakota Century Code, relating to acquisition of right to appropriate water for beneficial use.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 61-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02. Application for Beneficial Use of Water Required.) The United States, any department or agency thereof and any person, association or corporation intending to acquire the right to the beneficial use of any waters, before commencing any construction for such purpose or before taking the same from any constructed works, shall make an application to the state engineer for a permit to appropriate. The state engineer and state water conservation commission may, in order to permit rotation of crops, upon a request by the applicant and if found feasible, grant a permit or license which will be applicable to a gross area containing more than the acreage which can be irrigated in one year with the quantity of water authorized to be beneficially used under such permit or license.

§ 2. **Amendment.**) Section 61-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-04. Filing and Correction of Application.) The date of the receipt of the application provided for in section 61-04-02 in the state engineer's office shall be endorsed thereon and noted in his records. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of the ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refileing thereof. If the application is corrected as required and is refiled within such time, it, upon being accepted, shall take priority as of the date of its original filing, subject to com-

pliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling, except that the plans of the construction may be amended, with the approval of the state engineer, at any time, but no such change shall authorize any extension of time for construction except as provided in section 61-04-14. A change in the proposed point of diversion of water from a stream shall be subject to the approval of the state engineer, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

§ 3. Amendment.) Section 61-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06. Approval of Application—Endorsing Approval—Contents.) Upon the receipt of the proof of publication, the state engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall endorse his approval on the application, which thereupon shall become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed.

§ 4. Amendment.) Section 61-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-09. Completion of Work — Inspection — Certificate of Completion—Inspection by Others Than State Engineer.) On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the work, its safety, and efficiency. If not properly and safely constructed the state engineer may require the necessary changes to be made within such time as he shall deem reasonable and shall not issue his certificate of completion until such changes are made. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the state engineer, and any application subsequent in time shall have the benefit of such postponement of priority. For works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding twenty feet in the

extreme height from the foundation, the state engineer, in his discretion, may accept the report of an inspection by a reputable hydraulic engineer.

§ 5. **Amendment.)** Section 61-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-11. Inspection of Works.) If the state engineer, in the course of his duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, he at once shall notify the owner or his agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner, and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in his opinion necessary, may inspect any works under construction for the storage, diversion, or carriage of water, and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

§ 6. **Amendment.)** Section 61-04-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-14. Extending Time for Completion of Construction or Application to Beneficial Use.) The state engineer may extend the time for the completion of construction, or for application to beneficial use, at any time, or from time to time, for good cause shown. Where any such time has heretofore expired, the state engineer may renew and extend the same if application for renewal and extension is made prior to January 1, 1962.

Approved March 16, 1961.

CHAPTER 379

H. B. No. 596

(Christensen of Ward, Hofstrand,)

(Johnson, Loder)

WATER RIGHTS

AN ACT

To amend and reenact section 61-04-05 of the North Dakota Century Code, relating to publication of notice of application to appropriate water rights.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 61-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-05. Publication of Notice of Application—Contents—Proof—Failure to File Satisfactory Proof.) Upon the filing of an application which complies with the provisions of this chapter and the rules and regulations established thereunder, the state engineer shall instruct the applicant to publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation, among them the places of appropriation and of use, amount of water, the purpose for which it is to be used, the name and address of the applicant, and the time when the application will be taken up by the state engineer for consideration. Proof of publication, as required, shall be filed with the state engineer within sixty days from the date of his instructions to make publication. In case of failure within the time required to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, the application thereafter shall be treated as an original application filed on the date of receipt of proof of publication in proper form.

Approved February 28, 1961.

CHAPTER 380

H. B. No. 667

(Anderson of McHenry, Saugstad, Vinje)

WATER PURCHASE AND ASSESSMENTS
IN IRRIGATION DISTRICTS

AN ACT

To amend and reenact section 61-12-30 of the North Dakota Century Code, authorizing a board of flood irrigation to purchase water and relating to assessments in flood irrigation districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) That section 61-12-30 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-12-30. Board of Flood Irrigation May Contract for Purchase of Water—Assessment for Maintenance.) The board of flood irrigation shall have the exclusive care, management, and control of a flood irrigation project, but for such purpose may enter into a contract with responsible parties for the operation thereof, and may also, when necessary, enter into a contract with the United States, or with a district or political subdivision of the state, for purchase of water, or for furnishing water for flood irrigation. For the purpose of defraying the expense of the care, operation, maintenance, and repair of such project, including fees of the members of the board, said board annually shall certify to the county auditor the amount that will be required for such purposes during the following year. Thereupon the county auditor shall apportion to the several parcels or tracts of land within such project the amount which each parcel or tract of land shall be assessable, such apportionment to be made on the basis on which the original benefits were assessed under the provisions of section 61-12-22, and shall extend such amount upon the tax lists as a special tax. The taxes so collected shall be credited to the proper fund.

Approved March 11, 1961.

CHAPTER 381

H. B. No. 677

(Christopher, Breum, Wastvedt)

DAMS

AN ACT

To repeal chapter 61-18, embodying sections 61-18-01 to 61-18-20, both inclusive, of the North Dakota Century Code, relating to erection and maintenance of dams.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Repeal.) That chapter 61-18, embodying sections 61-18-01 to 61-18-20, both inclusive, of the North Dakota Century Code be and is hereby repealed.

Approved February 28, 1961.

CHAPTER 382

S. B. No. 131

(Trenbeath, Ringsak, Johnson,
(Luick, Yunker, Nesvig, Wadeson)

DRAINAGE PROJECTS

AN ACT

To amend and reenact sections 61-21-13, 61-21-14 and 61-21-15 of the North Dakota Century Code, relating to the establishment of drainage projects.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) That section 61-21-13 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-21-13. Hearing on Petition to Establish Drain and Surveyor's Report—Notice—Contents of.) Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain. At least ten days before such hearing the board shall

file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing on the petition. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain as shown by the record in the office of the register of deeds shall be mailed a notice of such hearing at his post-office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. The notice of hearing shall specify the point or place of beginning of the proposed drain and where it terminates, and shall describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing shall also specify when and where votes for and against such proposed drain shall be filed. The final date when votes must be filed shall not be less than ten days after the date of the hearing on the petition. A form of ballot shall be mailed with the notice of hearing for use by the affected landowners in voting for or against the proposed drain. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

§ 2. **Amendment.**) That section 61-21-14 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-21-14. Conduct of Hearing on Petition to Establish Drain.) Prior to the hearing provided for in section 61-21-13, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain, and shall limit voting rights to such landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such cost. The board shall fix a time, which shall not be less than ten days after the hearing on the petition, within which the votes for and against the establishment of the proposed drain shall be filed with the board. Objections to or approvals of the drain in writing may be filed with the board and shall be considered as votes for or against the proposed

drain, as the case may be. A telegram shall be deemed writing, and any form of written approval or objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing votes for or against the proposed drain has been reached, no more votes for or against such drain shall be filed and no person shall withdraw his or her name from the list of those voting for or against the proposed drain after the deadline for filing votes has been reached. Any withdrawals of objections to or approvals of the proposed drain before that time shall be in writing only. When the votes of affected landowners have been filed and the deadline for filing votes for and against such drain has been reached, the board shall immediately proceed to determine whether or not more than fifty percent of the votes filed, as determined by section 61-21-16 are in favor of the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter except to determine whether more than fifty percent of the votes filed are in favor of the drain and to adopt a resolution for discontinuance, if not more than fifty percent of the votes filed favor construction of the drain.

§ 3. **Amendment.**) That section 61-21-15 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-21-15. Denying or Making Order Establishing Drain — Costs When Petition Denied.) If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition or upon the trial in the district court, it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of the benefits to be derived therefrom or that fifty percent or more of the votes of affected landowners as determined by section 61-21-16, which were filed with the board, are opposed to such drain, the board shall deny the petition. An objection in writing filed with the board shall, as provided in section 61-21-13, be considered the same as a vote by ballot. The petitioners shall be liable jointly and severally to the board for all costs and expenses incurred in the proceedings, to be recovered by the board by action against the petitioners or upon their bond. If it shall appear, after due hearing as provided in sections 61-21-13 and 61-21-14, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is approved by more than fifty percent of the votes of the affected landowners filed with the board as determined by section 61-21-16, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

Approved March 16, 1961.

CHAPTER 383

H. B. No. 828

(Otos)

VOTING RIGHT OR POWER OF LANDOWNERS

AN ACT

To amend and reenact section 61-21-16 of the North Dakota Century Code, relating to the voting right or power of landowners.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) That section 61-21-16 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-21-16. Voting Right or Power of Landowners.) In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

1. The landowner or landowners of tracts of land affected by the drain shall have one vote for each dollar of assessment that his land is subject to as estimated by the board under the provisions of section 61-21-12. It is the intent of this subsection to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's interest.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

Approved March 11, 1961.

CHAPTER 384

H. B. No. 829

(Otos)

DRAINAGE DISTRICT FUND

AN ACT

To amend and reenact section 61-21-46 of the North Dakota Century Code, relating to the maximum levy and accumulation of drainage district fund.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) That section 61-21-46 of the North Dakota Century Code be and is hereby amended and reenacted to read as follows:

61-21-46. Maximum Levy — Accumulation of Fund.) The levy in any year for cleaning out and repairing a drain shall not exceed fifty cents per acre on any agricultural lands in the drainage district. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of fifty cents per acre. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full fifty cents per acre. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessment or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of fifty cents per acre for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.

Approved March 16, 1961.

CHAPTER 385

S. B. No. 301

(Morgan, Bopp, Fiedler, Gronvold)

GARRISON DIVERSION CONSERVANCY DISTRICT FUNDS

AN ACT

To amend and reenact subsection 9 of section 61-24-08 of the North Dakota Century Code, relating to funds of the Garrison Conservancy District.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 9 of section 61-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors, technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America in connection with the construction, operation and maintenance of works of the said Garrison Diversion Unit of the Missouri River Basin Project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, bonds and mortgages or other securities the payment of which is guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. The amount which may be expended or obligated in any one year for operating the district, exclusive of disbursements in connection with obligations to the federal government, shall not exceed ten percent of the maximum permissible;

Approved March 4, 1961.