

WATERS

CHAPTER 445

S. B. No. 138
(Trenbeath, Sinner)

STATE WATER RESOURCES POLICY

AN ACT

Declaring a policy concerning the protection, conservation, management, storage and utilization of the state water and related land resources.

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

§ 1. Declaration of State Water Resources Policy.) In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management and wise utilization of all of the water and related land resources of the state;
2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources;
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable;
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution and periodic updating of comprehensive, coordinated and well balanced short- and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor;
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal

- and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities;
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency;
 7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

§ 2. **Relation to Existing Laws.**) The provisions of this chapter shall not be construed to in any manner limit, impair or abrogate the rights, powers, duties or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development or utilization.

Approved March 6, 1965.

CHAPTER 446

H. B. No. 814
(Jungroth, Williamson)

POLLUTION OF WATERS

AN ACT

To amend and reenact section 61-01-14, and subsection 2 of section 61-02-14 of the North Dakota Century Code, relating to pollution of public waters and water conservation.

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

§ 1. **Amendment.**) Section 61-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-14. Fouling Public Water — What Included.) The provisions of section 61-01-13 shall be construed to include:

1. Privies and privy vaults;
2. Any stable, shed, pen, yard, or corral wherein is kept any horse, bovine, sheep, or swine and located nearer than sixty feet from the top of the bank of such lake or stream; and
3. Any slaughterhouse, grave, graveyard, or cemetery located nearer than eighty feet from any lake or stream.

The provisions of this section shall not be construed to prevent any city within this state from discharging untreated sewage or waste into any river temporarily on an emergency basis, provided that such discharges are determined by the state department of health not to be detrimental to public health and safety. The provisions of this section shall not be construed to prevent any city within this state from discharging untreated sewage or waste into any river prior to July 1, 1967.

§ 2. Amendment.) Subsection 2 of section 61-02-14 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To define, declare, and establish rules and regulations:
 - a. For the sale of waters and water rights to individuals, associations, corporations, municipalities, and other political subdivisions of the state, and for the delivery of water to users;
 - b. For the full and complete supervision, regulation, and control of the water supplies within the state;
 - c. For the complete supervision and control of acts tending to pollute watercourses, for the protection of the health and safety of all the people of the state; and to pollute shall mean such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquefied, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life; and

- d. Establish rules and regulations governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.

Approved March 19, 1965.

CHAPTER 447

H. B. No. 540

(Solberg, Mueller, Winge, Breum, Bowman, Glaspey)

(From LRC Study)

WATER LAW ADMINISTRATION

AN ACT

To create and enact section 61-04-28 of the North Dakota Century Code, relating to application for and correction of water permits and to amend and reenact sections 15-11-09, 61-01-01.1, 61-02-64, 61-02-64.1, 61-04-02, 61-04-06, 61-04-09, 61-04-14, 61-04-15, 61-04-22, 61-04-23, 61-04-25, 61-16-08, 61-16-15, 61-16-17, 61-16-18, 61-16-22, 61-20-05, 61-20-06, 61-20-07, 61-26-01, and 61-26-02 of the North Dakota Century Code, relating to the application, transfer, and forfeiture of water permits; the terms of office of commissioners of water management districts; the construction and repair of dams; the moneys paid out and reimbursed to the North Dakota state water commission; to provide for the transfer of the supervision of artesian wells to the state water commission; and to provide that the water management districts may make application for joint use of drains located within drainage districts; and to repeal sections 61-02-70, 61-04-08, 61-04-10, 61-04-13, and 61-20-08 of the North Dakota Century Code, relating to applications for water permits, certificates of construction for water works, and the appointment of a deputy state geologist.

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

§ 1. Amendment.) Section 15-11-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-11-09. State Geologist—Appointment of Deputy.) The professor of geology in the university shall be ex officio state geologist. He may appoint a deputy and may remove him at will. The salary of the deputy shall be determined by the state geologist within the limits of legislative appropriation.

§ 2. Amendment.) Section 61-01-01.1 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-01.1. Priority of Water Rights—Definitions.) In all cases where the use of water for different purposes conflicts such uses shall conform to the following order of priority:

1. Domestic use.
2. Livestock use.
3. Irrigation and industry.
4. Fish, wildlife and other outdoor recreational uses.

As between appropriations for the same use, priority in time shall give the better right. For purposes of this section:

- (1) "Domestic use" shall mean the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees or shrubbery; and for household pets and domestic animals kept for household sustenance whether the water is supplied by the individual, a municipal government or by a privately-owned public utility or other agency.
- (2) "Livestock use" shall mean the use of water for drinking purposes by herds, flocks or bands of domestic animals.
- (3) "Fish, wildlife and recreation" shall mean 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.

Neither a conditional nor a perfected water permit shall be required of a landowner or his lessee to appropriate water from any source or any constructed works for domestic and livestock uses. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than 12.5 acre feet of water.

§ 3. Amendment.) Section 61-02-64 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-64. Funds Created by Commission—Depository.) The commission shall have three funds to be known as the "contract fund", the "construction fund", and the "revenue bond payment fund". The moneys in each such fund shall be deposited in the state treasury.

§ 4. **Amendment.)** Section 61-02-64.1 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-64.1. Contract Fund—Purpose—Reimbursements To Be Deposited with the State Treasurer.) All contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any supplies, materials and equipment, shall be paid from the contract fund. The moneys in the contract fund shall be paid out or disbursed in such manner as may be determined by the commission. Any moneys paid to the state water commission by any department, agency, or political subdivision of this or another state or of the United States or any person or corporation to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, shall be deposited with the state treasurer and are hereby appropriated out of the state treasury and shall be credited to the contract fund.

§ 5. **Amendment.)** Section 61-04-02 of the 1963 Supplement to 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 water permit unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife and other recreational uses. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife and other recreational uses the water user shall notify the state engineer of such constructed works, dam or dug-out's location and acre-feet capacity. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than 12.5 acre-feet of water.

§ 6. **Amendment.)** Section 61-04-06 of the 1963 Supplement to 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 conditional water permit allowing the applicant to appropriate water, and shall state in such approval the time within which the water shall be applied to a beneficial use.

§ 7. **Amendment.)** Section 61-04-09 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-09. Application to Beneficial Use — Inspection — Perfected Water Permit — Inspection by Others Than State Engineer.) On or before the date set for the application of the water to a beneficial use, or prior thereto, upon notice from the owner that water has been applied to a beneficial use, the state engineer shall cause the work to be inspected, after due notice to the holder of the conditional water permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the 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 conditional water permit until such changes are made. Failure to make such changes shall cause the postponement of the priority under the conditional water 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 may have the benefit of such postponement of priority. When the works are found in satisfactory condition, after inspection, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and such limitations upon the water permit as shall be warranted by the condition of the works and to the extent and under the conditions of the actual application of the water to a beneficial use, but in no manner extending any right described in the conditional water permit. 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.

§ 8. **Amendment.)** Section 61-04-14 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-14. Extending Time for Application to Beneficial Use.) The state engineer may extend the time for the application to beneficial use, 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 upon application.

§ 9. Amendment.) Section 61-04-15 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-15. Assignment or Transfer of Conditional or Perfected Water Permit—Regulations Governing.) Any conditional or perfected water permit to appropriate water for irrigation purposes shall be assigned only upon approval by the state engineer of an application for such assignment. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned by the holder of such water permit. Upon reasonable proof that such assignment or transfer can be made without detriment to existing rights, the state engineer shall cause the water permit involved to be simultaneously severed and assigned or transferred from such land without losing priority of any right previously established. The decision of the state engineer shall be final unless some party interested in the same source of water supply shall within sixty days bring appropriate action in the district court of the county in which the land is located appealing such decision. Applications for assignment and transfer shall be in the forms required by the state engineer. The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes unless such rights to use water have been severed as provided in this section.

§ 10. Amendment.) Section 61-04-22 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-22. Prescriptive Water Right.) Any person, firm, corporation, or municipality which used or attempted to appropriate water from any watercourse, stream, body of water or from an underground source for mining, irrigating, manufacturing or other beneficial use over a period of twenty years prior to July 1, 1963, shall be deemed to have acquired a right to the use of such water without having filed or prosecuted an application to acquire a right to the beneficial use of such waters if such user shall, within two years from July 1, 1963, file with the state engineer an application for a water permit in the form required by the rules and regulations of the state engineer, and substantiated by such affidavits and other supporting information as the state engineer may require. If the state engineer finds that the application and supporting documents substantiate the claim he shall approve

such application, which shall thereupon become a perfected water permit with a priority date relating back to the date when water in the quantity stated in the application was first appropriated. In the event the prescriptive user shall fail to file with the state engineer an application for a water permit within two years from July 1, 1963 such prescriptive water right shall be declared abandoned and forfeited. The decision of the state engineer in rejecting an application made under the provisions of this section may be appealed to the district court in the manner prescribed by section 61-04-07. Within sixty days after July 1, 1963 the state engineer shall cause to be published in all official county newspapers within the state notice of the deadline of filing for a water permit by prescriptive users. Any such prescriptive water permit acquired under this section shall be subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25.

§ 11. **Amendment.)** Section 61-04-23 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-23. Forfeiture of Water Rights—Inspection of Works.)

All appropriations of water must be for a beneficial or useful purpose, and when the appropriator or his successor in interest ceases to use it for such purpose for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare such water permit or right forfeited. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

§ 12. **Amendment.)** Section 61-04-25 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-25. Forfeiture of Water Rights—Hearing—Appeal.)

At such hearing the verified report of the state engineer or engineers of the state water commission shall be prima facie evidence for the forfeiture and cancellation of such water permit or portion thereof. If no one appears at the hearing, such water permit or portion thereof shall be declared forfeited and canceled. If interested parties shall appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that such water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless

such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, shall be declared forfeited and canceled. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

§ 13.) Section 61-04-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-04-28. Correction of Application or Water Right by State Engineer.) Upon proof satisfactory to him that an application for a water permit or any water permit contains an error relative to the point of diversion or legal description of the land to which the water is to be applied, the state engineer may, by written notice to the holder of the affected water permit, correct such error without publication of notice.

§ 14. **Amendment.)** Section 61-16-08 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for Appointment to Board—Term of Office—Filling Vacancies—Compensation of Commissioners.) When a water management district has been created any resident freeholder in the district shall be eligible for appointment to the board of commissioners thereof. The terms of office of commissioners appointed to the first district board shall be determined by lot and shall be as herein provided. If such district board shall consist of three commissioners, one commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. When a district board consists of five commissioners, two commissioners shall hold office for the term of two years, one for three years, one for four years and one commissioner a term of five years from the first day of January next following the date of their appointment. When a board shall consist of seven commissioners, two commissioners shall hold office for two years, two for three years, two for four years and one for five years from the first day of January next following the date of their appointment. When the term of office of a district commissioner has expired, his successor shall hold office for five years from the first day of January next following the date of their appointment. The term of office of a commissioner shall not terminate until his successor in office is appointed and qualified. In case the office of any district commissioner shall become vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board whose office

became vacant. Members of the board of commissioners shall receive the same per diem as members of a board of county commissioners and shall be reimbursed for expenses incurred in the performance of their duties on a like basis.

§ 15. **Amendment.)** Section 61-16-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-15. Construction and Repair of Dam—Proposals for—Presented to Whom—Hearing Proposals.) No dams or other devices for water conservation, flood control regulation, watershed improvement or storage of water shall be constructed within any water management district except in accordance with the provisions of this chapter. Any proposal for the construction of any dam or other facilities shall be presented first to the board of commissioners of the district within which the contemplated project is located. Such board shall consider the same, and if the proposal meets with its approval, it shall forward the proposal to the state water commission as soon as possible. After the receipt thereof, the state water commission shall consider the same in such detail as to it may seem necessary and proper, and shall make its recommendations and suggestions as to the propriety, efficiency, and feasibility of the proposal, and, within forty-five days of its receipt forward the same to the board of commissioners. The board thereupon shall require, or if the project is to be constructed at the expense of the district shall furnish, complete plans and specifications therefor, which shall be forwarded to the state water commission. The state water commission shall examine the same in detail and, within forty-five days of the receipt of such plans and specifications shall either refuse to allow the construction of any unsafe, improper, or dangerous dam or other device which would interfere with the orderly control of the water resources of the district, or order such changes or modifications thereof as in its judgment may be necessary for safety. Any person aggrieved by any such ruling of the state water commission shall have the right to a full hearing before such commission and a full consideration of all evidence available before a final order of the state water commission shall be entered. Such order of the state water commission shall be subject to appeal to the district court as provided in this chapter.

§ 16. **Amendment.)** Section 61-16-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-17. Dams Constructed Within a District Shall Come Under Control of Board of Commissioners.) All dams, water

conservation and flood control works constructed within any district, unless specifically exempted therefrom, shall, without affecting the state water commission's authority relative to such dams and works, automatically come under the jurisdiction of the board of commissioners. No changes or modification of any existing dams or other devices shall be made without complying fully with the provisions of this chapter.

§ 17. **Amendment.)** Section 61-16-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-18. When Dams Constructed by Federal Agency Under Joint Control of Board of County Commissioners and Commission.) Any dam or water control device or flood control project constructed by or with the assistance of any federal agency, and having no one responsible for its maintenance and operation, and outside of a water management district, shall come under the joint jurisdiction of the board of county commissioners of the county in which such dam or water control device is located and the commission. The board of county commissioners and the commission are authorized to exercise control and supervision over the same and may make such provisions as they deem necessary or desirable for the proper maintenance thereof. In such case, the board of county commissioners may petition for the establishment of a water management district as provided in this chapter.

§ 18. **Amendment.)** Section 61-16-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-22. Financing of Special Improvements—Procedure.) When it is proposed to finance in whole or in part the construction of a water conservation or flood control project by issuance of special assessment warrants or with funds raised through the collection of special assessment taxes levied against lands and premises benefited by construction and maintenance of such project, and after such project is approved by the commission as provided herein and by the board of county commissioners of each of the counties wherein the district lies, the board, by resolution, shall declare that it is necessary to construct and maintain such project therein. Such resolution shall state briefly the nature and purpose of the proposed project, and shall state the time and place within said district where the board will meet to consider any protests to the proposed project, and, under the conditions specified in section 61-16-23, shall include provision for protesting the levy of the general tax provided in section 61-16-35 to be made by the board of county commissioners. Such resolution shall be

given by publication thereof once each week for two successive weeks in a newspaper of general circulation in the district. The hearing shall be held not less than twenty days after the first publication of such resolution. If within thirty days after the first publication of such resolution, the owners of property liable to be specially assessed for the proposed improvement shall file written protests with the secretary of the board, protesting against the improvement, the board at the time set for such hearing shall determine the sufficiency thereof. If the board finds the protests to contain the names of the owners of a majority by taxable value of the land subject to assessment for construction of the proposed project, then the protests shall be a bar against proceeding further with such improvement. If the protests are found to be insufficient or invalid, the board may proceed to determine damages, if any, which will be sustained by owners of affected property and the board may proceed to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 of this code, and acts amendatory thereof, and supplemental thereto, for the construction of sewers within municipalities. When any district has entered into an agreement pursuant to the provisions of this chapter, under the terms of which the contract for such work is to be let by the United States government or by the state of North Dakota, or by both jointly, the board, after hearing protests and determining to proceed with the improvement, may dispense with the balance of the requirements of this chapter relating to plans for, bids upon, contracts for, construction of, and any other steps leading up to the construction of an improvement by the special assessment method, and the board may proceed to cause assessments to be made as in other cases provided.

§ 19. Amendment.) Section 61-20-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-05. Township and County Assessors Shall List All Artesian and Flowing Wells Annually—Forwarding Data to State Water Commission.) The county and township assessors shall list all artesian or flowing wells in their respective districts each year at the time of making the assessment, giving the quarter section on which each is situated, the name of the owner with his address, and as far as possible, the diameter, depth to the main flow, and size of the flow. Such data shall be forwarded by the county auditor to the state water commission. In case of new flowing wells, the driller also shall file with the state water commission all of the foregoing data, and any other valuable data, as to the formation. This shall be done within two weeks after the completion of the well.

§ 20. **Amendment.)** Section 61-20-06 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-06. Duties of State Water Commission.) The state water commission shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. The state water commission shall:

1. Counsel and consult with the owner and assist him to work out the most desirable control and use of his well;
2. Select at least three representative flowing wells in each county having that number, and as many more as it may deem advisable;
3. Cause the record of their flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply;
4. Plan and conduct such other investigations as it may find advisable to ascertain the best method of prolonging the utility of the same;
5. Keep a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and keep it on file for public reference;
6. Secure the enforcement of all laws pertaining to artesian and phreatic waters of the state;
7. Publish from time to time, as it may deem advantageous, bulletins containing information concerning the artesian wells and phreatic waters of the state.

The state water commission may make such additional reasonable rules and regulations governing such wells as it shall determine.

§ 21. **Amendment.)** Section 61-20-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-07. Enforcement of Chapter by State Water Commission—Appeal.) The provisions of this chapter shall be enforced by the state water commission. An appeal from the commission's ruling may be taken under the provisions of chapter 28-32 of the North Dakota Century Code.

§ 22. **Amendment.)** Section 61-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-26-01. City or Water Management District Application for Joint Drain.) The governing body of any city or the board of commissioners of any water management district desiring to use an existing drain under the jurisdiction of the county board of drainage commissioners, with or without modification, as a watercourse or channel to provide a water supply for the city or water management district, may make application therefor to the board of drain commissioners of the county in which such drain is located. In such application there shall be set forth a comprehensive plan of joint use and of any proposed extensions, changes, connecting canals, mains or other contrivances for conducting the flow of water in, to or from said drain and an offer of payment by the city or water management district in a definite sum as a proportionate share of the cost of the existing drain, and a sum certain or a percentage offer for future maintenance costs.

§ 23. Amendment.) Section 61-26-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-26-02. Hearing on City or Water Management District Joint Drain.) Upon receipt of an application the board of drain commissioners shall call and give notice of a public hearing, in the manner provided for hearing on a petition to establish a drain, and at such hearing shall receive all evidence and opinions offered for or against the application or of suggested modifications. After such hearing the board of drain commissioners and the governing body of the city or board of commissioners of the water management district, whichever the case may be, may enter into an agreement for the joint use of such drain setting forth in such agreement the extent, conditions and nature of permitted use and action, the amount of payment to be made as proportionate share of original cost and the amount or percentage of costs of future maintenance to be paid by the city or water management district.

§ 24. Repeal.) Sections 61-02-70, 61-04-08, 61-04-10, 61-04-13, and 61-20-08 of the North Dakota Century Code are hereby repealed.

Approved March 15, 1965.

CHAPTER 448

H. B. No. 749
(Stallman, Dornacker)

CONSTRUCTION OF DRAINS

AN ACT

To amend and reenact subsection 11 of section 61-16-11, and sections 61-21-01, 61-21-13, 61-21-14, 61-21-16, 61-21-18, and 61-21-22 of the North Dakota Century Code, relating to the construction of drains.

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

§ 1. Amendment.) Subsection 11 of section 61-16-11 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. To have all of the powers conferred by statutes upon a board of county drain commissioners provided that when the board of commissioners shall undertake the construction of any drainage project, including channel realignments, the provisions of sections 61-21-10 through 61-21-18, and 61-21-22, relating to the petition, hearing, voting rights, and appeal shall govern;

§ 2. Amendment.) Section 61-21-01 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-01. Definitions.) In this chapter, unless the subject matter otherwise requires:

1. The word "drain" shall include any natural water-course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works;
2. "Board" shall mean the board of drainage commissioners;
3. "Cleaning out and repairing of drain" shall include deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition;
4. "Lateral drain" shall mean a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain,

provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board; and

5. "Affected landowners" shall mean landowners whose land is subject to assessment or condemnation.

§ 3. **Amendment.**) Section 61-21-13 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-13. Hearing on Petition to Establish Drain and Surveyor's Report—Notice—Contents.) 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 or whose property shall be subject to condemnation for the proposed 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 and each landowner whose property shall be subject to condemnation 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 or whose property shall be subject to condemnation for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

§ 4. **Amendment.)** Section 61-21-14 of the 1963 Supplement to the North Dakota Century Code 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 or whose property shall be subject to condemnation 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 and the amount of their property to be condemned for such project. 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.

§ 5. **Amendment.**) Section 61-21-16 of the 1963 Supplement to the North Dakota Century Code 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:

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 or one vote for each dollar of the assessed valuation of land condemned for the drain, 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.

§ 6. **Amendment.**) Section 61-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-18. Appeal to District Court—Time—Undertaking—Hearing.) Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. Such appeal shall be taken and perfected within thirty days from and after the date of publication of the "notice of order establishing the drain and time of expiration of right of appeal". The appellant must file with the clerk of court, and serve upon a member of the board, a notice of appeal, and must give an undertaking to be approved by the clerk of the district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. Such undertaking shall run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear such appeal not less than ten days nor more than thirty days after the filing of such appeal with the clerk, the day of hearing to be fixed by the court, but such time for

hearing may be extended by the court for good cause for a period not to exceed thirty days. The case shall be tried in all respects as a court case without a jury and costs shall be allowed and taxed as costs are taxed in said courts in civil actions and upon like notice. Where such appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

§ 7. **Amendment.)** Section 61-21-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-22. Hearing on Assessment—Appeal to State Engineer—Correction of Assessments—Relocating Drain—Fees of State Engineer.) At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition within ten days after the hearing on assessments, to make a review of such percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to him that such assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed drain. For his services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time he is engaged upon such work. All moneys received by the state engineer shall be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands.

Any landowner who may claim that he will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineer upon the filing of a bond in the sum of two hundred and fifty dollars with the board for the payment of the costs of the state engineer in the matter. The state engineer shall not determine the specific amount of benefits upon an appeal by an individual landowner, but shall only determine if there is any benefit to the landowner, and the determination of the state engineer upon such question shall be final.

Approved March 15, 1965.