

# WATERS

## CHAPTER 498

SENATE BILL NO. 2100  
(Committee on Natural Resources)  
(At the request of the Water Commission)

### COMPENSATION OF MEMBERS OF WATER COMMISSION

AN ACT to amend and reenact section 61-02-12 of the North Dakota Century Code, relating to the compensation and expenses of the appointive members of the state water commission.

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

SECTION 1. AMENDMENT.) Section 61-02-12 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-12. COMPENSATION AND EXPENSES OF APPOINTIVE MEMBERS OF COMMISSION.) Each appointive member of the commission shall receive the same compensation per day and shall be reimbursed for his expenses in the same amounts as provided for in section 54-35-10 for members of the legislative council while attending meetings of the commission or otherwise engaged in official business of the commission, including time of travel between his home and the place at which he performs such duties.

Approved March 8, 1973

## CHAPTER 499

HOUSE BILL NO. 1489  
(Hentges, Weber)

SPECIAL IMPROVEMENT FINANCING IN  
WATER MANAGEMENT DISTRICTS

AN ACT to amend and reenact sections 61-16-22 and 61-16-23 of the 1971 Supplement to the North Dakota Century Code, relating to the financing of special improvements in water management districts.

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

SECTION 1. AMENDMENT.) Section 61-16-22 of the 1971 Supplement to 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 project by issuance of 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 twenty 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.

SECTION 2. AMENDMENT.) Section 61-16-23 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-23. RESOLUTION OF BOARD TO INCLUDE PROVISION FOR PROTESTING AND REFUSING AUTHORITY TO MAKE GENERAL TAX LEVY IN CERTAIN CASES - ELECTION TO BE HELD.) The resolution of the board of commissioners provided for in section 61-16-22 may state that any deficiency or probable deficiency in the special fund for the payment of project warrants of the district shall be forestalled and the ability of the fund to pay principal and interest punctually shall be restored by a general tax levy upon the taxable property in the counties wherein the district lies, as provided in section 61-16-35, and the question of whether such general tax levy shall be permitted, shall be included on the ballot of the next countywide election or at a special election called for that purpose.

There shall be no authority to pay any such deficiency or probable deficiency in this special fund by a general tax levy unless the electors of the county or counties included in the district, approve the levy of the tax at the next countywide election or the special election called for such purpose by resolution of the board of commissioners. The date of such election shall be not less than twenty days from the date of the resolution calling for the election. The board shall cause notice of such election to be published once each week for at least two weeks prior to the date thereof in the official newspaper of the county. Such notice shall specify the date, polling hours, and the polling places of such election which shall be the same as for general elections and shall contain a copy of the resolution calling the special election and a statement of the question to be voted upon as it shall appear upon the ballot. The board shall appoint an inspector, two judges, and two clerks of election for each polling place.

The ballot for such election shall be separate from other ballots used on the same day for other elections, and shall be printed, and shall state the question in substantially the following form:

Shall the board of county commissioners be permitted to levy a general tax on all taxable property in the county to pay any deficiency or probable deficiency that might occur in the project warrant fund of \_\_\_\_\_ District, (here insert the name of the water management district) which fund was established by resolution of the commissioners of said district on \_\_\_\_\_, (here insert date of such resolution.)

Yes ☐

No ☐

Spoiled or blank ballots cast at such election shall not be counted for or against the question voted upon.

If a majority of the votes cast at such election are "Yes" votes, authority to make such a general tax levy shall be deemed approved.

If a majority of the votes cast at such election are "No" votes, authority to make such a general tax levy shall be denied, but said board of commissioners may nevertheless issue warrants and levy special assessments against land and premises benefited by the project as otherwise provided for in section 61-16-22.

The election officials shall be compensated in the manner provided by law for general elections, and the costs of such election shall be borne by the district concerned.

Approved March 27, 1973

## CHAPTER 500

SENATE BILL NO. 2035  
(Stroup, Roen, Jacobson, Christensen)  
(From Legislative Council Study)

## WATER MANAGEMENT DISTRICTS

AN ACT to provide for division of water management districts along county lines; to amend and reenact sections 61-16-05, 61-16-06, 61-16-07, 61-16-08, 61-16-12, 61-16-14, 61-16-18, 61-16-28, 61-16-29, 61-16-36, and 61-16-48 of the North Dakota Century Code, relating to establishment and consolidation of water management districts, the area included within water management districts, the board of commissioners, and joint control by the board of county commissioners and state water conservation commission over maintenance and operation of dams constructed by or with federal assistance; and to repeal sections 61-16-02, 61-16-03, 61-16-04, and 61-16-42 of the North Dakota Century Code, relating to establishment and dissolution of water management districts.

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

SECTION 1. DIVISION OF A WATER MANAGEMENT DISTRICT.)  
Any water management district consisting of two or more counties may be divided into two or more districts by filing with the state water conservation commission a petition signed by a majority of the board of commissioners of the district or by fifty percent or more of the landowners within the district. When such petition is filed by a board, it shall be accompanied by a certified copy of the governing board's resolution authorizing the signing of the petition. The petition shall contain a detailed plan for the disposition of property, assets, and liabilities of the district, which shall be as equitable as practicable to every landowner within the district and shall fully protect creditors and the holders of improvement warrants of the petitioning district. The plan may provide for a continuance of assessments upon properties in the petitioning district to retire outstanding obligations, or for the assumption of such outstanding obligations, and the spreading of assessments for the payment thereof over properties in the newly created districts. Districts created under this section must consist of one or more counties. District boundaries must coincide with county lines. No petition shall be approved by the commissioner

unless it fully meets the requirements of this section.

The commission shall fix a time and place for a public hearing on such petition. The place of hearing shall be convenient and accessible for a majority of the landowners of the proposed districts. Not less than ten days prior to the date of hearing, notice thereof shall be published in at least one newspaper of general circulation in each of the proposed districts. Additional notice of such hearing may be given in a manner prescribed by the commission.

Prior to the hearing, the state engineer, as secretary and chief commission engineer, shall make, or cause to be made, an investigation of the need for division of the petitioning district and shall submit a report of his findings to the commission. This report shall be presented and read at the petition hearing. If the commission finds that it is not feasible, desirable, or practical to divide the petitioning district, it shall deny the petition and state the reasons for denial. If, however, the commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make division and establishment of the proposed water management districts desirable, it shall grant the petition and create the districts. Upon creation of the new districts, the commission shall dissolve the former district.

SECTION 2. AMENDMENT.) Section 61-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-05. ESTABLISHMENT OF WATER MANAGEMENT DISTRICTS - AREA TO BE INCLUDED.) All land in North Dakota shall be within water management districts by July 1, 1974.

The state water conservation commission is hereby authorized to, and shall, by or before July 1, 1974, create water management districts in each county of the state which has no water management district.

The state water conservation commission is hereby authorized to, and shall, by or before July 1, 1974, create water management districts at least countywide in size in each county of the state which has two or more water management districts, or a water management district smaller than countywide in size, except that any district which is smaller than countywide in size established prior to January 1, 1973, may, in lieu of merging with the new countywide district, continue to exist, within its established boundaries, independently of such countywide district if its board of commissioners files with the state water commission written notice of such intention on or before January 1, 1974. If a county has more than one district, or a district which does not include the entire county, and does not choose to remain independent of the countywide district, the board of commissioners of such district or districts shall, within sixty days after notification, present a detailed plan



to the state water conservation commission for the disposition of property, assets, and liabilities to facilitate creation of a countywide water management district. The plan shall be as equitable as practicable to every landowner within the district and shall fully protect creditors and the holders of improvement warrants of such districts. The plan may provide for a continuance of assessments upon properties in the district to retire outstanding obligations, or for the assumption of such outstanding obligations, and the spreading of assessments for the payment thereof, over properties in the new district. If a plan is not presented to the state water conservation commission within the sixty-day period, or if the plan does not meet the requirements of this section, the state water conservation commission shall prepare a plan to be carried out by the new district when created. The water management districts shall, within thirty days after notice by the state water conservation commission, provide all books, records, files, receipts, minutes of meetings, and other information the commission deems necessary to prepare or review the plan.

SECTION 3. AMENDMENT.) Section 61-16-06 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-06. ORDER CREATING WATER MANAGEMENT DISTRICT.) A certified copy of the order creating a water management district shall be filed with the county auditor of each county within the district. A like copy of the order shall be filed with the secretary of state. The secretary of state shall issue to the state water conservation commission his certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by him, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. The commission's order shall specify the name or number by which a district shall be known.

SECTION 4. AMENDMENT.) Section 61-16-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-07. BOARD OF COMMISSIONERS - APPOINTMENT AND NUMBER.) When a water management district has been created, and the state water conservation commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a board of district commissioners shall be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a district board consisting of three or five commissioners. When a district includes two counties, the board of commissioners shall consist of five

members: three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the board of commissioners shall consist of five members: one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the board of commissioners shall consist of two members from the county having the largest aggregate taxable valuation of property in the district, and one member from each of the other counties. If a district includes five or seven counties, the board of commissioners shall consist of one member from each county. Appointments to the board of commissioners shall be made by the boards of county commissioners of the respective counties.

SECTION 5. AMENDMENT.) Section 61-16-08 of the 1971 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 - REMOVAL - FILLING VACANCIES - COMPENSATION OF COMMISSIONERS.) When a water management district has been created, any resident landowner 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. Each member of the board of commissioners shall receive the sum of twenty dollars per day while performing his duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel



expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. A commissioner may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the commissioner subject to removal, at which hearing such commissioner must be apprised of and allowed ample opportunity to repudiate such evidence, that such commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 6. AMENDMENT.) Section 61-16-12 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-12. DISTRICT BUDGET - TAX LEVY - FINANCING BY SPECIAL ASSESSMENT.) The board of commissioners shall estimate the expenses of the district from the date of its establishment until the end of the ensuing fiscal year, and before July first in each year thereafter shall estimate district expenses for the fiscal year ensuing. Estimates of district expenses may include costs of rights-of-way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects therein. Upon completion and adoption of a budget covering necessary expenses, the board of commissioners shall send a copy of such budget or apportionment thereof to the county auditor of each county in the district. If a district includes more than one county, the estimates shall be apportioned to counties affected. Each county auditor shall transmit the same to the board of county commissioners of his county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, by resolution levy, authorize, and direct their county auditor to extend and spread upon the tax roll of his county a tax of not to exceed three mills on each dollar of taxable valuation in the district or part of district situated in the county in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights-of-way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the board of commissioners, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

If the project is one involving the maintenance of a drain, and it is desired to finance such project in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed fifty cents per acre on any agricultural lands benefited by the drain. 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 assessments 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 of commissioners may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.

SECTION 7. AMENDMENT.) Section 61-16-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-14. COUNTY TREASURER TO COLLECT AND REMIT TAXES TO DISTRICT TREASURER - DEPOSIT OF DISTRICT FUNDS.) The treasurer of each county in which a water management district, or a part of such district, is situated shall collect all district taxes and special assessments together with penalty and interest thereon, if any, in the same manner as county taxes are collected, and shall within twenty days after the close of each month pay to the treasurer of the district taxes and assessments collected by him during the preceding month, and shall notify the secretary of the district of such payment. The district treasurer shall on or before the twentieth day of each month report to the chairman of the board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each meeting of the board the treasurer shall submit to the board a statement of the district's finances.

All collections received by the treasurer of the district shall be deposited by him in the Bank of North Dakota or such other state or national bank in the state as the board shall direct to the credit of the district. No claim shall be paid by the treasurer until approved by the board of commissioners, and then only upon warrants signed by the chairman and countersigned by the treasurer of the board. All claims against the district shall be verified in the same manner as claims against a county.

SECTION 8. AMENDMENT.) Section 61-16-18 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-18. WHEN DAMS CONSTRUCTED BY FEDERAL AGENCY UNDER CONTROL OF WATER MANAGEMENT DISTRICT.) Any dam or water control device or flood control project constructed by or with the assistance of any federal agency which has no one responsible for it, shall become the responsibility of the water management district where it is located. The water management district may take any action concerning this dam or water control device it deems feasible or necessary.

SECTION 9. AMENDMENT.) Section 61-16-28 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-28. CERTIFICATION OF ASSESSMENTS TO COUNTY AUDITOR.) When a district board of commissioners has by resolution levied, or caused to be levied, special assessments to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed eight percent per annum and shall not be less than the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after 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 special assessments are situated, the total amount levied against such lands in his county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district 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, if any, which will 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 board of commissioners shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16-26.1.

SECTION 10. AMENDMENT.) Section 61-16-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-29. EXTENSION OF SPECIAL ASSESSMENTS ON TAX LISTS - COLLECTION - PAYMENT TO WATER MANAGEMENT DISTRICT.) The county auditor of each county shall extend the special assessments certified to him on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

SECTION 11. AMENDMENT.) Section 61-16-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-36. APPEAL FROM DECISION OF COMMISSION OR BOARD OF COMMISSIONERS - UNDERTAKING - JURISDICTION.) From any order or decision of the commission or of the board of commissioners, an appeal may be taken to the district court, by any person aggrieved, upon filing an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. Such undertaking shall be conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be executed to the commission or the board of commissioners, as the case may be, and may be sued on in the name of the obligee. Where the water management district is confined to the limits of one county, the appeal shall be taken to the district court of that county. When such district includes two or more counties, the appeal shall be taken to the district court of the county in which the land which is claimed to be affected adversely by the order or decision appealed from lies.

SECTION 12. AMENDMENT.) Section 61-16-48 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-48. CONSOLIDATION OF WATER MANAGEMENT DISTRICT.) Any two or more water management districts may be consolidated into a single district by filing with the state water conservation commission a petition signed by a majority of the board of commissioners of each of the districts or by fifty percent or more of the landowners within each of the districts. When such petition is filed by the boards of commissioners of the districts petitioning to consolidate, it shall be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of such petition. The petition shall contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan shall be as equitable as practicable to every landowner within the districts and shall fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of such outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No petition shall be approved by the commission unless it fully meets the requirements of this section.

The commission shall fix a time and place for a public hearing on the petition. The hearing site shall be convenient and accessible for a majority of the residents of the proposed district. Not less than ten days prior to the date of hearing, notice thereof shall be published in at least one newspaper of general circulation in each of the districts being consolidated.

Additional notice of such hearing may be given in a manner prescribed by the commission.

Prior to the hearing, the state engineer, as secretary and chief commission engineer, shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of his findings to the commission. This report shall be presented and read at the petition hearing. If the commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, it shall deny the petition and state the reasons for denial. If, however, the commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation and establishment of the proposed water management district desirable, it shall grant the petition and create the district. Upon creation of the new water management district, the commission shall dissolve the included districts.

SECTION 13. REPEAL.) Sections 61-16-02, 61-16-03, and 61-16-04 of the North Dakota Century Code, and section 61-16-42 of the 1971 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1973



## CHAPTER 501

SENATE BILL NO. 2168  
(Committee on Natural Resources)  
(At the request of the State Health Department)

## WATER POLLUTION CONTROL

AN ACT to amend and reenact sections 61-28-03, 61-28-04, 61-28-05, subsection 2 of section 61-28-06, subsection 2 of section 61-28-07, and section 61-28-08 of the North Dakota Century Code, relating to the control, prevention and abatement of pollution of the surface waters of the state; and providing a penalty.

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

SECTION 1. AMENDMENT.) Section 61-28-03 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28-03. STATE WATER POLLUTION PREVENTION AGENCY - BOARD.) There is hereby created and established a state water pollution control board. The board shall consist of ten persons. It shall include the heads of the departments of health, water conservation, game and fish, the state geologist, and six citizen members appointed by the governor. Municipal, industrial, and wildlife interests shall each be represented by a citizen member. Agricultural interests shall be represented by three citizen members. The executive secretary of the board shall be the chief sanitary engineer of the department.

Of the six members appointed by the governor, each shall serve six-year terms, except that of those four first appointed, two shall be appointed for three years, and two shall be for six years. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.

The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of his department to perform the duties of the member making the designation. Such person, if any, designated pursuant to this section, shall have the powers and be subject to the duties and responsibilities of the appointing office.

All members of the board shall serve without compensation for their duties, but shall be reimbursed for necessary travel and other expenses incurred in the performance of their official



duties. Reimbursement shall be paid out of funds allocated to the department for water pollution control.

The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.

SECTION 2. AMENDMENT.) Section 61-28-04 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28-04. POWERS AND DUTIES.) The state department of health shall have and may exercise the following powers and duties:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.
2. To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of the state.
3. To advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
4. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided.
5. To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this chapter.
6. To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof.

7. To issue, modify, or revoke orders:
  - a. Prohibiting or abating discharges of wastes into the waters of the state.
  - b. Requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control or abate pollution.
8. To hold such hearings, to issue notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer such oaths, and to take such testimony as the department deems necessary, and any of these powers may be exercised on behalf of the department by any members thereof or a hearing officer designated by it.
9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this chapter.
10. To require proper maintenance and operation of disposal systems:
  - a. Have the power to require the owner or operator of any point source to:
    - (1) Establish and maintain records;
    - (2) Prepare and submit a report;
    - (3) Install, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods;
    - (4) Sample effluents; and
    - (5) Provide such other information as the department may reasonably require.
  - b. Have the right of entry, upon or through any premises in which an effluent source is located, or in which any records required to be maintained pursuant to subdivision (a) are located. Such power may be exercised by authorized agents, representatives, and employees of the department.

- c. Have the power to have access to and copy any records, inspect any monitoring equipment or method required under subdivision (a), or to sample any effluents being discharged into the waters of the state.
11. To exercise all incidental powers necessary to carry out the purposes of this chapter.
12. The state department of health is hereby designated as the state water pollution control agency for all purposes of the federal Water Pollution Control Act, as amended (33 U. S. C. 466), and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that Act and similar federal acts.
13. In the administration of standards of water quality the department shall allow a reasonable time for persons discharging wastes into the waters of the state to comply with such standards.
14. Establish and modify, jointly with the state water commission, the classification of all waters in accordance with their present and future most beneficial uses.
15. The department, with the cooperation of the state water commission, shall formulate and issue standards of water quality and classification of water according to its most beneficial uses. Such standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.
16. Formulate effluent standards, which include as a minimum all categories for which the federal government has set standards pursuant to the Federal Water Pollution Control Act, as amended. Such state standards shall be at least as stringent as the standards adopted by the federal government.
17. Review from time-to-time, at intervals of not more than three years, established classification of waters, water quality standards, and effluent standards.
18. Make rules governing the application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications

relating to the construction, modification, or operation of disposal systems.

19. Make rules governing the issuance, denial, modification or revocation of permits.
20. Hold any hearings necessary for the proper administration of this chapter.
21. Make rules for the administration of this chapter.
22. Initiate actions in court for the enforcement of this chapter.
23. Establish minimum requirements for the treatment of wastes.
24. The department, with the cooperation of other departments, may maintain an action for damages in the name of the state for violations of the provisions of this chapter.

SECTION 3. AMENDMENT.) Section 61-28-05 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28-05. RULES, REGULATIONS AND STANDARDS.) The department may adopt rules and regulations and, jointly with the state water pollution control board, shall hold public hearings to consider the adoption, amendment or repeal of rules, regulations, and standards of quality of the waters of the state as provided in this chapter, and notice of such public hearing or hearings shall be given by publication of a notice of such hearings or hearing in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least ten days prior to said hearing and which hearing shall be held in the state capitol in Bismarck, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards, and the state water pollution control board shall consider any other matters related to the purposes of this chapter and shall advise the department concerning the administration of this chapter.

SECTION 4. AMENDMENT.) Subsection 2 of section 61-28-06 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. It shall be unlawful for any person to carry on any of the following activities unless he holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
  - a. The construction, installation, modification or operation of any disposal system or part

thereof or any extension or addition thereto without plans and specifications previously approved by the department and the state water commission.

- b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
- c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
- d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

SECTION 5. AMENDMENT.) Subsection 2 of section 61-28-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 2. Determining compliance or violation with the provisions of this chapter, or any rule, regulation, or order issued thereunder by the department shall be conducted in accordance with the provisions of chapter 28-32 entitled "Administrative Agencies Practice Act" of the North Dakota Century Code and any person claiming to be aggrieved or adversely affected by actions taken, or by any rule, regulation or order issued under this chapter may request a hearing by the department. There shall be a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department may, without further notice or hearing, issue an order reciting the existence of such emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the department shall be afforded a hearing before the department and the state water pollution control board within ten days. On

the basis of such hearing, the emergency order shall be continued, modified or revoked within thirty days after such hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment to welfare is to the livelihood of such persons, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution, or to take such other action as may be necessary.

SECTION 6. AMENDMENT.) Section 61-28-08 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28-08. PENALTIES - INJUNCTIONS.)

1. Any person who willfully violates this chapter or any permit condition or limitation implementing this chapter shall be punished by a fine of not more than twenty-five thousand dollars per day of violation, or by imprisonment in the county jail for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment in the county jail for not more than two years, or by both.
2. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months, or by both.
3. Any person who violates this chapter, or any permit condition or limitation implementing the chapter, and any person who violates any order issued by the department shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.
4. The department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person violating any provision of this chapter or any rule, regulation or order issued thereunder.