

WATERS

CHAPTER 676

SENATE BILL NO. 2234
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

WATER COMMISSION AUTHORITY

AN ACT to amend and reenact sections 61-02-01, 61-02-02, 61-02-04, 61-02-05, 61-02-07, 61-02-08, 61-02-13, 61-02-17, 61-02-24, 61-02-24.1, 61-02-25, 61-02-26, 61-02-27, 61-02-28, 61-02-29, 61-02-30, 61-02-33, 61-02-35, 61-02-37, 61-02-46, 61-02-47, 61-02-48, 61-02-51, 61-02-53, 61-02-54, 61-02-55, 61-02-56, 61-02-57, 61-02-58, 61-02-61, 61-02-62, 61-02-63, 61-02-64, 61-02-66, 61-02-67, 61-02-68, and 61-02-72 of the North Dakota Century Code, relating to the authorities of the water conservation commission; and to repeal sections 61-02-31 and 61-02-50 of the North Dakota Century Code, relating to the date of the priority of a water right and negotiability of bonds.

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

SECTION 1. AMENDMENT. Section 61-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-01. ~~Water conservation, flood control, and abatement of stream pollution~~ management, and development declared a public purpose. It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation, management, development and control of waters in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, ~~and the regulation and prevention of water pollution and the management of the atmospheric resources,~~ involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water ~~conservation~~ commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

SECTION 2. AMENDMENT. Section 61-02-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" shall mean the state water ~~conservation~~ commission.
2. "Works" shall be deemed to include:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.
3. "Cost of works" shall include:
 - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
 - b. The cost of all water rights acquired or exercised by the commission in connection with such works;
 - c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other

expenses necessary or incident to determining the feasibility or practicability of any project;

- e. Administrative expenses;
 - f. The construction of the works and the placing of the same in operation; and
 - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter, including, but not limited to, funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
4. "Owner" shall include all individuals, associations, corporations, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
 5. "Project" shall mean any one of the works defined in subsection 2, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.

SECTION 3. AMENDMENT. Section 61-02-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-04. State water ~~eonservation~~ commission - Members - Terms - Qualifications. The state water ~~eonservation~~ commission shall consist of the governor, commissioner of agriculture, and seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor may appoint a representative to serve in his stead at such meetings as he may be unable to attend. The seven appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that two terms and not more than three terms shall expire on the first day of July of each odd-numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of his official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers. ~~The state water eonservation commission may also be known and referred to as the "State Water Commission"~~.

SECTION 4. AMENDMENT. Section 61-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-05. Chairman of commission. The governor shall be the chairman of the commission, ~~which~~. The governor shall designate a

vice chairman who shall be a member of the commission; and a. The state engineer shall be the secretary who may or may not be a member of the commission.

SECTION 5. AMENDMENT. Section 61-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-07. Quorum - What constitutes. A majority of the members of the commission shall constitute a quorum, and the affirmative or negative vote of ~~four~~ five members shall be necessary to bind the commission except for adjournment.

SECTION 6. AMENDMENT. Section 61-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-08. Meetings of commission. Notice of any meeting of the commission may be given by telegram to members of the commission at least ~~forty-eight~~ fourty-eight hours before the meeting, ~~or shall be given~~ by written notice sent to each member of the commission at least three days before the meeting. No notice shall be necessary for any member who has personally signed an admission of notice and consent to holding the meeting. ~~All meetings of the commission shall be held at its principal office except that the~~ The commission may hold ~~special~~ meetings at such times and places and upon such notice as it, by resolution, may provide. The chairman, or in his absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of his absence or disability the vice chairman shall preside.

SECTION 7. AMENDMENT. Section 61-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-13. Employment of assistants, fixing compensation - Claims for compensation and expenses. The commission may hire and employ all necessary aid, help, and assistants, including members of all the professions, for the efficient performance of its powers and duties, and ~~shall fix their compensation and allowances for their actual expenses. In so doing, the commission shall be guided by the compensation and allowance for expenses permitted and paid by the federal government for the performance of similar services by federal employees and agencies. All claims for compensation and expenses made by the members, agents, and employees of the commission must be itemized as required by the laws of this state and must be presented to the department of accounts and purchases and allowed by the office of the budget for payment.~~

SECTION 8. AMENDMENT. Section 61-02-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-17. Records, accounts, and statements of works and projects undertaken - Filed with secretary of state office of management and budget. The commission shall keep full and complete accounts and records of all matters and things relating to works and projects

undertaken, established, and maintained by the commission and shall prepare annual balance sheets, income, and profit and loss statements, showing the financial condition of each project, and shall file copies thereof with the secretary of state office of management and budget for public inspection at all reasonable times by any interested parties or citizens of the state.

SECTION 9. AMENDMENT. Section 61-02-24 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-24. Cooperation and coordination with all existing agencies. The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:

1. With the United States and any department, agency, or officer thereof.
2. With the states of Minnesota, South Dakota, Montana, and Wyoming, or any political subdivision thereof, and with any other state, and with any department or officer or political subdivision of any state.
3. With the Dominion of Canada or any of its provinces, and with any agency, department, or officer of the Dominion or any of its provinces.

The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

SECTION 10. AMENDMENT. Section 61-02-24.1 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-24.1. Cooperation and participation of political subdivisions. All political subdivisions, including but not limited to, counties, townships, cities, park districts, and water ~~management~~ resource districts may separately or jointly with other political subdivisions, the state of North Dakota through the commission or federal departments or agencies, investigate, plan and do all things

necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the commission to pay rents, charges, or other payments for the use of works of the commission.

SECTION 11. AMENDMENT. Section 61-02-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-25. Duties of state agencies acting through interstate compacts or agreements. Every state officer, department, board, and commission authorized by any law of this state to act upon or to be concerned with any interstate commission involving any interstate compact, or to act upon any foreign commission involving any foreign compact, or with any federal agency or department of the United States, the subject matter of which in any way concerns or involves water conservation, flood control, irrigation, water pollution or contamination, or the exercise of the powers and duties granted to the commission by this chapter, first shall submit to the commission the plans, purposes, and contemplated action and shall receive the approval of the commission therefor before making any agreement, contract, purchase, sale, or lease, for any of said purposes. The commission may give its aid and assistance to any state agency so acting with respect to any interstate compact, ~~including the tri-state waters commission.~~

SECTION 12. AMENDMENT. Section 61-02-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-26. Duties of state agencies concerned with intrastate use or disposition of waters. Every state officer, department, board, and commission heretofore or hereafter authorized by any law of this state to take any action, perform any duties, or make any contract which concerns the use or disposition of waters, or water rights, within the state first shall submit to the ~~commission~~ state engineer any plans, purposes, and contemplated action with respect to the use or disposition of such waters, and except as provided in this chapter, shall receive the consent and approval of the ~~commission~~ state engineer before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under the provisions of this chapter.

SECTION 13. AMENDMENT. Section 61-02-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-27. Proposals with respect to use or disposition of waters to be presented to ~~commission~~ state engineer. All persons, including corporations, voluntary organizations, and associations, when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water or water rights ~~under the jurisdiction of the commission~~, shall present to the ~~commission~~ state engineer all proposals with respect to the use or disposition of any such waters

before making any agreement, contract, purchase, sale, or lease in respect thereof.

SECTION 14. AMENDMENT. Section 61-02-28 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-28. Plans, investigations, and surveys concerning use of waters - Special powers of commission. The commission may make plans, investigations, and surveys concerning the use of any and all waters, either within or without this state, for purposes of establishing, maintaining, operating, controlling, and regulating systems of irrigation, municipal, domestic, industrial, recreational, and fish and wildlife works and projects in connection therewith within the state. The commission shall have all necessary powers of purchasing and, selling, leasing and assigning in accordance with chapter 61-04, rights and interests in the use or in the appropriation of waters concerned with such systems of irrigation for which it has filed a declaration of intent pursuant to section 61-02-30, or obtained a conditional water permit for projects or works in connection therewith, and shall possess full authority and jurisdiction to exercise and assert actual possession control over the corpus of all of such waters, and to secure control and regulation of regulate the diversion thereof subject to rules and regulations and methods prescribed by the commission. This power and authority shall include full right to contract and agree with any person, association, agency, or entity concerning water rights possessed held by such person, association, agency, or entity through which the commission may be given full authority and jurisdiction over such water and water rights. In connection therewith the commission may coordinate, subordinate, supplement, and act jointly or subordinately with the United States, and any agency or department thereof, covering or concerning any federal project affecting water use, works, or projects in connection therewith.

SECTION 15. AMENDMENT. Section 61-02-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-29. Commission to have full control over unappropriated public waters of state. The commission shall have full control over all unappropriated public waters of the state, whether above or under the ground, for which it has filed a declaration of intention pursuant to section 61-02-30, to the extent necessary to fulfill the purposes of this chapter.

SECTION 16. AMENDMENT. Section 61-02-30 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-30. Commission acquiring water rights and administering provisions of chapter - Declaration of intention. In acquiring the rights and administering the terms of this chapter, the commission shall not be limited to the terms of the statutes of this state relating to water

rights heretofore enacted, but, in addition thereto, the commission may initiate a right to the waters of this state by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause said notice to be filed in the office of the state engineer. The state engineer shall issue a conditional water permit to the commission consistent with the terms of the declaration of intention, which right shall vest in such commission on the date of the filing of such declaration. The commission also shall file in the office of the state engineer copies of its plans and specifications involved in completing any project for the appropriation of water which it intends to construct. The state engineer, subject to the approval of the commission, may grant Except as provided by this section, water rights to shall be acquired by any person, association, firm, or corporation, or to any municipality or to any state or federal agency, department or political subdivision in the manner provided by law chapter 61-04.

SECTION 17. AMENDMENT. Section 61-02-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-33. Commission to file declaration of completion of appropriation with state engineer. Upon completing the construction of works and application to beneficial use of the waters described in the declaration provided in section 61-02-30, the commission shall file in the office of the state engineer a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate and the conditional water permit for such works obtained from the state engineer.

SECTION 18. AMENDMENT. Section 61-02-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-35. When right of commission to waters attaches - Continuation of authority and jurisdiction. The right of the commission to the waters within this state acquired as provided in this chapter for the purposes defined in this chapter shall attach at and from their source and while flowing in the streams, traveling to the means of control, as well as when actually confined by such means. The authority and jurisdiction of the commission shall continue over such waters after they are released for purposes of use and shall continue to such places of use, and the commission, through and by officers and agents under its authority, may continue to exercise and assert actual possession control over the corpus of such waters and may prevent the diversion thereof without permission first obtained. The commission may reclaim and possess all waters furnished or supplied by it seeping or overflowing from the previous place of use.

SECTION 19. AMENDMENT. Section 61-02-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-37. Headgates and measuring devices maintained by appropriators of natural streams - Commission adopting rules preventing diversion of water. All appropriators of the natural flow of natural streams shall maintain headgates and measuring devices at their respective points of diversion for the purpose of enabling the commission or its authorized agents to determine the amount of water being diverted at any time. The commission may adopt and exercise any method or act to prevent the diversion of any waters ~~owned by it~~ under its control without permission first obtained.

SECTION 20. AMENDMENT. Section 61-02-46 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-46. Commission may issue bonds ~~for acquiring lands for irrigation - Limitation - Principal and interest - How paid - Payment restricted.~~ The commission, in order to participate with state agencies, political subdivisions or the federal government, may provide by resolution, at one time or from time to time, for the issuance of state water commission revenue bonds not exceeding a total of three million dollars, for the purpose of paying the cost of any one or more of the works authorized by this chapter and for the purpose of acquiring lands and preparing and developing the same for irrigation. The principal and interest of such bonds shall be payable from the special fund provided for in this chapter for such payment the accounts established by the commission in the funds provided for in this chapter. The bonds shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such bonds shall be payable solely from funds or revenues pledged or available for their payment as authorized in this chapter. Such bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds or revenues pledged for their payment.

Each bond shall recite in substance that the bond, including interest thereon, is payable solely from the funds or revenues pledged to the payment thereof, and that the bond does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 21. AMENDMENT. Section 61-02-47 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-47. When bonds to mature - Callable before maturity. The bonds which may be issued by the commission shall mature at such time or times, either serially or at one time, in not more than ~~thirty~~ forty years from their date, or dates, as may be fixed by the resolution of the commission, but may be made callable before maturity, if so stated in the resolution and on the face of each bond, ~~upon thirty~~

days¹ notice, which shall be published once in a newspaper of general circulation published in Burleigh County.

SECTION 22. AMENDMENT. Section 61-02-48 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-48. Commission to determine interest rate, form, denomination, and execution of bonds. The commission shall determine the rate of interest bonds issued under this chapter shall bear, the time or times of payment of such interest, the form of the bonds and the interest coupons to be attached thereto whether registered or coupon, and the manner of executing the bonds and coupons, if any, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereon, which may be at any bank or trust company within or without this state. The bonds shall be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum on those issues which are sold at private sale. There is no interest rate ceiling on these issues sold at public sale by the commission at public sale or private sale and at such price or prices as the commission shall determine.

SECTION 23. AMENDMENT. Section 61-02-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-51. How bonds may be secured. The bonds provided for in this chapter may be secured by works or lands, as the case may be, and the income derived therefrom, and other funds as the commission may pledge, and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, lands, property, and facilities to be acquired out of the proceeds of such bonds and as provided in this chapter.

SECTION 24. AMENDMENT. Section 61-02-53 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-53. Issuance and sale of bonds - Proceeds from sale - Use. The bonds authorized under this chapter may be issued and sold from time to time, and in such amounts as may be determined by the commission. The commission may, subject to the provisions of section 61-02-48, sell the bonds in such manner and for such price as it may determine to be for the best interests of the state, but no such sale shall be made for less than ninety-eight percent of the par value of each bond. The proceeds of the bonds shall be used solely for the payment of the cost of the works authorized by this chapter or the cost of acquiring lands and preparing or developing such lands for irrigation, as the case may be, and shall be paid out in such manner and under such restrictions as the commission may provide. The bonds may be sold at private sale without notice or at public sale after publication of the notice of sale by the commission.

SECTION 25. AMENDMENT. Section 61-02-54 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-54. Resolution providing for issuance of bonds - Separate series of bonds. Each resolution providing for the issuance of bonds provided for in this chapter shall set forth the purpose or purposes for which the bonds are to be issued, the provisions for the payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds. The bonds authorized by each such resolution shall constitute a separate series. The revenues from works or projects and such other funds as the commission may determine, may be pledged to secure one or more series of bonds. The bonds of each series shall be identified by a series of letters, and may be sold and delivered at one time or from time to time.

SECTION 26. AMENDMENT. Section 61-02-55 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-55. Issuance of temporary bonds in lieu of definitive bonds. Prior to the preparation of definitive bonds, the commission may issue temporary bonds, with or without coupons in registered or coupon form, exchangeable for definitive bonds when such the definitive bonds have been executed and are available for delivery. Such Temporary bonds may be issued without any other proceedings or the happening of any other condition or thing specified and required by this chapter.

SECTION 27. AMENDMENT. Section 61-02-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-56. Guarantying and insuring the payment of interest and principal on revenue bonds - Method. Whenever the commission shall find it necessary to insure or guaranty the payment of all or a part of the principal or interest of any series of water conservation commission revenue bonds, in order to sell or market such bonds, it may enter into an agreement to pledge, hypothecate, obligate, place under trust indenture, or agree to deposit in a trust fund, moneys appropriated by chapter 95 of the Session Laws of 1939 for "construction bond guarantee," and in addition thereto, moneys now or hereafter appropriated, thus to guaranty and insure the payment of the interest on and principal of state water conservation commission revenue bonds. From and with moneys thus appropriated, the commission may guaranty or insure, or agree to pay, or pay the interest on and principal of such bonds, not exceeding, however, twenty percent of the par value of any such bonds or series of bonds. The commission shall not thus pledge, hypothecate, or place under trust indenture, or agree thus to pledge, hypothecate, or place under trust indenture, an amount in excess of the total amount of moneys appropriated by chapter 95 of the Session Laws of 1939 and moneys subsequently appropriated in addition thereto for such purposes. Any agreement entered into by the commission thus to pledge, hypothecate, or place under trust indenture any amount in excess of moneys appropriated for such guaranty fund purposes shall be null and void. The appropriation of such funds, and the use

thereof by the commission to guaranty or insure the payment of ~~not to exceed twenty percent of the par value of~~ any of its bonds, shall not be construed to be pledging the credit of the state of North Dakota nor the guarantying by the state of any water ~~conservation~~ commission revenue bonds.

SECTION 28. AMENDMENT. Section 61-02-57 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-57. Moneys appropriated to pay interest and principal of bonds available as a revolving fund. Moneys appropriated to enable the state water ~~conservation~~ commission to guaranty the payment of the interest or principal of its bonds ~~to the extent of not to exceed twenty percent of the par value thereof~~ shall be available to the commission as a continuing revolving fund, and moneys so appropriated, and any unexpended balances thereof, shall not revert to the state general fund at the end of any biennial fiscal period but shall be available for use by the commission to insure and guaranty or pay, to the extent provided in this chapter, the payment of interest and principal of its bonds until otherwise required by law.

SECTION 29. AMENDMENT. Section 61-02-58 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-58. Lien upon bond proceeds. All moneys received from bonds of any series issued pursuant to the provisions of this chapter shall be placed in a separate account in the construction fund and shall be used solely for the purpose of paying the cost of the works or projects for the construction of which such bonds have been issued, or for the purpose of acquiring lands and preparing and developing the same for irrigation, or for the purpose of paying costs of issuance and establishing any reasonably required reserve funds. There shall be a lien upon such moneys, until so used in favor of the holders of the bonds or the trustee provided for in this chapter in respect to such bonds.

SECTION 30. AMENDMENT. Section 61-02-61 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-61. Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture. Either the resolution providing for the issuance of bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the state and the commission in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, and the custody, safeguarding, and application of all moneys, and may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the commission and satisfactory to the original purchasers of the bonds issued therefor, their

successors, assigns or nominees, who may be given the right to require that security given by contractors and by any depository of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to such purchasers, successors, assigns, or nominees. Such resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trust, and mortgages securing bonds, and debentures of corporations. No enumeration of particular powers granted shall be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the works affected by such indenture.

SECTION 31. AMENDMENT. Section 61-02-62 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-62. Powers of commission in issuance of bonds. In connection with the issuance of any bonds for the purpose of paying in whole or in part, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of any works or project, or in order to secure the payment of such bonds, the commission may:

1. Pledge all or any part of the income, profit, and revenue of such works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of such works or project, or other funds as the commission may determine and may covenant to pay such income, profit, and revenue and funds into the revenue bond payment fund;
2. Covenant against pledging all or any part of the income, profit, and revenue of such works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of such works or project;
3. Covenant against mortgaging all or any part of such works or project or against permitting or suffering any lien thereon;
4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with such works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
 - a. To pay all costs of operation and maintenance of such works or project together with necessary repairs thereto;

- b. To meet and pay the principal and interest of all such bonds as they severally become due and payable; and
 - c. To create such reserves for the principal and interest of all such bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of such works or project as the commission shall determine;
5. Make such further covenants as to such prices, rates, and charges as the commission shall determine;
 6. Create special funds, in addition to those required by this chapter, for the meeting of contingencies in the operation and maintenance of such works or project and to determine the manner in which, and the depository or depositories in which, such funds shall be deposited and the manner in which the same shall be secured. Any bank or trust company incorporated under the laws of this state may act as such depository and shall furnish such indemnifying bonds or pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars;
 7. Provide for the replacement of lost, destroyed, or mutilated bonds;
 8. Covenant against extending the time for the payment of the principal or interest on any of such bonds, directly or indirectly, by any means or in any manner;
 9. Prescribe and covenant as to the events of default and the terms and conditions upon which any or all of such bonds shall become, or may be declared, due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
 10. Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
 11. Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay such bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of such trustee, or trustees, and limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant or exercise the right of foreclosure;
 12. Make covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure such bonds, or, in the absolute discretion of the commission may make such bonds more marketable,

notwithstanding that such covenants, acts, or things may not be enumerated or expressly authorized in this chapter; and

13. Do all things in the issuance of such bonds, and in providing for their security, that may not be inconsistent with the Constitution of North Dakota.

SECTION 32. AMENDMENT. Section 61-02-63 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-63. Mortgage of commission - Contents - Purchaser at foreclosure sale - Rights. In the discretion of the commission, any trust indenture executed by it as security for a series of bonds issued by it may contain provisions for conveying in trust or mortgaging the works, the project, or any part of such works or project, including all water rights, which are a part thereof, constructed with the proceeds of such bonds or with such proceeds as supplemented by the proceeds of a grant to aid in financing such construction from the United States of America, or any instrumentality or agency thereof, or any other revenues or funds, and may be in such form, and with such rights, remedies, and provisions as is customary in trust indentures, deeds of trust, mortgages securing bonds, and debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to such works or project free from any trust or other obligation of the commission, the state of North Dakota, or the public thereof, as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in such works or project for sale, rental distribution, or other beneficial use.

SECTION 33. AMENDMENT. Section 61-02-64 of the 1981 Supplement to 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. Each fund shall have such accounts as the commission may determine. The use or disposition of such accounts, including the pledging thereof for the security of and payment on one or more series of bonds, shall be determined by the commission.

SECTION 34. AMENDMENT. Section 61-02-66 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-66. Construction fund - Contents - Disbursements - Surplus remaining. The proceeds of the bonds of each series issued under the provisions of this chapter shall be placed to the credit of ~~the~~ an account for such project or works in the construction fund, which fund account at all times shall be kept segregated and set apart

from all other funds accounts. There shall be credited to the ~~construction fund~~ such account all accrued interest upon the bonds and the interest received upon the deposits of moneys in ~~such fund account~~ and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in the construction fund shall be paid out or disbursed in such manner as may be determined by the commission, subject to the provisions of this chapter, to pay the costs of the works. Any surplus which may remain in the ~~construction fund account~~, after providing for the payment of the cost of the works, shall be added to and shall become a part of the revenue bond payment fund provided for in this chapter.

SECTION 35. AMENDMENT. Section 61-02-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-67. Revenue bond payment fund - Contents. To identify and distinguish the fund provided and available for the payment of the bonds issued pursuant to the provisions of this chapter, there is established, as a part of the moneys of this state received and kept by the state treasurer, a fund designated the "revenue bond payment fund." All moneys received by the state treasurer, whether from payments made by the commission, or from legislative appropriation, or from the proceeds of taxes, or otherwise, which, by law or by other authoritative designation, shall be made applicable to the payment of such bonds or interest thereon, shall be kept by the state treasurer in a separate account in such fund distinct from all other moneys and shall be disbursed by him only for the particular purpose or purposes for which such moneys shall be delivered to him. No other appropriation shall be made of the moneys in such ~~fund~~ account until such bonds shall be paid fully.

SECTION 36. AMENDMENT. Section 61-02-68 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-68. State treasurer to pay interest on bonds - Redemption of bonds. The state treasurer shall pay the interest on the bonds when due, or if the bonds are issued with coupons upon presentment to him of the coupons for such interest when due, and shall redeem such bonds upon their maturity by paying the principal thereof. All such payments shall be made out of the designated account in the revenue bond payment fund without the auditor's warrant. All moneys in such ~~fund account~~, or so much thereof as may be necessary, is appropriated hereby for the payment of the interest and the principal of such bonds, and this appropriation shall not be repealed, and no provisions made in this chapter for the payment of said bonds and interest shall be discontinued until the debt evidenced by said bonds, both principal and interest, shall have been paid.

* SECTION 37. AMENDMENT. Section 61-02-72 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 61-02-72 was also amended by section 36 of House Bill No. 1055, chapter 319.

61-02-72. Revenue bonds of commission are legal and valid investments of financial institutions and exempt from taxation. Revenue bonds regularly and legally issued by the commission are valid investments of the funds of any bank, trust company, insurance company, investment company, building and loan association, or similar financial institution. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the commission pursuant to this chapter, and such bonds shall be authorized security for any and all public deposits, and such bonds, and the interest thereon, shall be exempt from all state, county, and municipal taxes.

SECTION 38. REPEAL. Section 61-02-50 of the North Dakota Century Code and section 61-02-31 of the 1981 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 17, 1983

CHAPTER 677

HOUSE BILL NO. 1209
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER PERMIT CANCELLATION

AN ACT to cancel and declare forfeited water permit number 3134, relating to the right of the North Dakota parks and recreation department to take water from the Turtle River; and to declare an emergency.

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

SECTION 1. Cancellation of water permit number 3134. The right of the North Dakota parks and recreation department to appropriate three-acre feet of water from the Turtle River for irrigation purposes under water permit number 3134 is hereby canceled and all rights thereunder are hereby forfeited.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 10, 1983

CHAPTER 678

SENATE BILL NO. 2217
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

WATER PERMITS

AN ACT to amend and reenact sections 61-04-02, 61-04-06, 61-04-09, 61-04-15, and 61-04-15.1 of the North Dakota Century Code, relating to water permits for the appropriation of water.

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

SECTION 1. AMENDMENT. Section 61-04-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02. Permit for beneficial use of water required. Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. 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 the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15,418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet [15,418.52 cubic meters] of water per year will be appropriated. In those cases where a permit is not required of a landowner or his lessee to appropriate less than twelve and one-half acre-feet [15,418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may provide by regulation for the waiver of waive any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

SECTION 2. AMENDMENT. Section 61-04-06 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06. Hearing - Criteria for issuance of permit. Upon the receipt of the proof of publication, the state engineer shall conduct a hearing on the application. The state engineer shall issue a permit if he finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.
 - b. The effect of the economic activity resulting from the proposed appropriation.
 - c. The effect on fish and game resources and public recreational opportunities.
 - d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
 - e. Harm to other persons resulting from the proposed appropriation.
 - f. The intent and ability of the applicant to complete the appropriation.

If approved, the approval shall be noted on the application, and the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6,167,409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to seven nine copies of the transcript shall be paid by the applicant.

SECTION 3. AMENDMENT. Section 61-04-09 of the 1981 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. On or before the date set for the application of the water to a beneficial use, or upon notice from the owner that water has been applied to a beneficial use, the state engineer shall cause the works 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 works, its safety, and efficiency. If the works are 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 a perfected water permit until such changes are made. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the priority under the water permit for such time as may elapse from to the date set for completing the changes until the changes are actually made to the satisfaction of the state engineer, and any intervening application subsequent in time submitted prior to the date the changes are actually made 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 or conditions upon the water permit as stated in the conditional water permit as authorized by section 61-04-06.2; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

SECTION 4. AMENDMENT. Section 61-04-15 of the 1981 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. Any conditional or perfected water permit may be assigned only upon approval by the state engineer. Any conditional or perfected water permit may also be transferred, with the approval of the state engineer, to any parcel of land owned or leased 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 assigned or simultaneously severed and 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 form required by regulation. 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 of such land, except that any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.

SECTION 5. AMENDMENT. Section 61-04-15.1 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-15.1. Change in point of diversion or use.

1. A permit holder may change the point of diversion or purpose of use without affecting the priority date if approved by the state engineer.
2. The state engineer may approve the proposed change if he determines that the proposed change will not adversely affect the rights of other appropriators. Applications for a change in the point of diversion or any purpose of use shall be processed and evaluated in the same manner as an application for a water permit.
3. A change in the purpose of use may be authorized only for a superior use as determined by the order of priorities contained in section 61-04-06.1.

Approved March 23, 1983

CHAPTER 679

SENATE BILL NO. 2389
 (Senators Maixner, Leibhan)
 (Representative Whalen)

WEATHER MODIFICATION AUTHORITY LEVY

AN ACT to amend and reenact sections 61-04.1-06, 61-04.1-24, 61-04.1-26, 61-04.1-32, and 61-04.1-40 of the North Dakota Century Code, relating to mill levy for weather modification authorities.

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

SECTION 1. AMENDMENT. Section 61-04.1-06 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-06. Direction and supervision by state water ~~eonservation~~ commission - Independent functions retained by board. The powers, functions, and duties of the board shall be administered under the direction and supervision of the North Dakota state water ~~eonservation~~ commission. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the commission.

* SECTION 2. AMENDMENT. Section 61-04.1-24 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-24. Petition contents. The petition for the creation of a weather modification authority, and for appointment of commissioners shall contain:

1. A title with the heading: "Petition for Creation of (insert name of county) Weather Modification Authority".
2. The following paragraph: We, the undersigned qualified electors of (name of county), state of North Dakota, by this initiated petition request that the (name of county) board of county commissioners of said county create by resolution a (name of county) weather modification

* NOTE: Section 61-04.1-24(3) was amended by section 84 of Senate Bill No. 2071, chapter 593.

authority and appoint the following five qualified electors of the county to a ten-year term of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

3. The following paragraph: We, the undersigned qualified electors of the (name of county), state of North Dakota, are notified hereby that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant unto the authority by law the power to certify to the board of county commissioners a mill levy tax not to exceed ~~two~~ four mills upon the net taxable valuation of property in said county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund shall be used for weather modification activities in conjunction with the state of North Dakota. We, the undersigned understand that the authority requested in this petition expires ten years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided by North Dakota Century Code section 61-04.1-26, for five-year periods in accordance with North Dakota Century Code section 61-04.1-27.
4. A heading: "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of North Dakota, are authorized to represent and act for us, and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.
5. Petition details: All signatures to such petition shall be numbered, and dated by month, day, and year. The name shall be written with residence address and post-office address including the county of residence followed by state of North Dakota.
6. An affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that he circulated the petition and that each of the signatures to said petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated.

7. The petition must state the mills to be levied by the county for the purposes of this chapter.

* SECTION 3. AMENDMENT. Section 61-04.1-26 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-26. Tax may be certified by weather modification authority. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed ~~two~~ four mills upon the net taxable valuation of the property in the county for a "weather modification" fund. The tax shall be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this chapter.

** SECTION 4. AMENDMENT. Section 61-04.1-32 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-32. County budget may be waived for first appropriation - Conditions. The provisions of chapter 11-23 shall not apply to appropriations made under the provisions of this chapter. However, immediately after a weather modification authority has been created by resolution of the board of county commissioners, and after certification of a mill levy by the weather modification authority, and only for the initial or first appropriation for the authority, the county commissioners may, at their discretion, appropriate from moneys, not otherwise appropriated, in the general fund, such moneys as are necessary for carrying out the provisions of this chapter. However, the appropriation shall not exceed an amount equal to what funds would be raised by a ~~two-mill~~ four-mill levy upon the net taxable valuation of the property in the county.

SECTION 5. AMENDMENT. Section 61-04.1-40 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-40. State water ~~conservation~~ commission - Compensation - Expenses. Each member of the North Dakota state water ~~conservation~~ commission shall receive the same compensation paid for other commission duties, for each day actually and necessarily engaged in the performance of official duties in connection with the administration of this chapter. Commission members and employees shall be reimbursed for actual and necessary expenses incurred in carrying out their official duties in the same manner and at the same rates as provided by law for state employees.

Approved March 4, 1983

* NOTE: Section 61-04.1-26 was also amended by section 85 of Senate Bill No. 2071, chapter 593.

** NOTE: Section 61-04.1-32 was also amended by section 86 of Senate Bill No. 2071, chapter 593.

CHAPTER 680

SENATE BILL NO. 2064
(Legislative Council)
(Interim Natural Resources Committee)

IRRIGATION DISTRICT ORGANIZATION AND
AUTHORITY

AN ACT to amend and reenact sections 61-05-01, 61-05-03, 61-05-07, 61-05-08, 61-05-10, 61-05-13, 61-05-14, 61-05-15, 61-05-20, 61-06-01, 61-06-09, 61-06-10, 61-06-13, 61-06-15, 61-06-17, 61-06-21, 61-06-22, 61-07-01, 61-07-03, 61-07-04, 61-07-08, 61-07-09, 61-07-15, 61-07-16, 61-07-18, 61-07-19, 61-07-20, 61-07-33, 61-08-05, 61-08-12, 61-08-25, 61-08-32, 61-09-01, 61-09-02, 61-09-03, 61-09-13, 61-09-20, 61-10-01, 61-10-05, 61-10-12, 61-10-25, 61-10-26, 61-10-32, 61-10-33, 61-10-38, 61-11-03, 61-11-05, 61-11-08, 61-11-11, 61-11-13, 61-13-02, 61-14-01, 61-14-03, 61-14-07, 61-14-08, 61-14-09, and 61-14-15 of the North Dakota Century Code, relating to the organization, government, powers, fiscal affairs, boundaries, and dissolution of irrigation districts, assessments in irrigation districts, flood irrigation districts, organization of corporations for irrigation purposes, and general rules governing irrigation; and to repeal section 61-10-16 of the North Dakota Century Code, relating to exclusion of lands from an irrigation district; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 61-05-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-01. Definitions. As used in this chapter and in succeeding chapters dealing with irrigation districts:

1. "Elector" shall mean means any landowner owning not less than five acres [2.02 hectares] of land whose land will be or is subject to assessments for construction or other costs, within a proposed or existing irrigation district, and who is a resident of this state. As herein used the term "owner" shall mean means an owner in fee simple and shall also ~~include~~ includes:

- a. An entryman of government land.

- b. A purchaser of land under contract.
 - c. A guardian, executor, administrator, or trustee.
 - d. A corporation organized and existing under the laws of this state.
 - e. The United States of America and the state of North Dakota.
2. ~~The term "works" shall include~~ "Works" ~~includes~~ canals, ditches, pipelines, and other conveyance systems, pumping plants, rights of way, easements, reservoirs, dams, well fields, and other works for the appropriation of water and the necessary sites for pumping plants, reservoirs, and dams, well fields, and all means and property required for a completed operating system of irrigation works.
 3. "Board" ~~shall mean~~ means the board of directors of any irrigation district.
 4. "Irrigable acres" or "irrigable lands" ~~shall mean~~ means those lands which can or will be served by the district's works, as determined by the state engineer before the district is organized, or as determined from time to time by the district's board of directors. Whenever land or acreage is described as being "susceptible of irrigation" or "subject to assessment", it ~~shall be interpreted to mean~~ means the same as irrigable acres.

SECTION 2. AMENDMENT. Section 61-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-03. Votes of electors - Number permissible. Any elector owning twenty acres or less but not less than five acres, subject to assessments for construction or other costs within a proposed or existing district, shall have one vote, ~~and any.~~ Any elector owning more than twenty acres subject to such assessments within ~~such any~~ irrigation district which will receive all or a portion of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres or major fraction thereof, but no elector shall be entitled to cast more than eight votes in any district election regardless of the number of acres of land owned by ~~him~~ the elector in the district. Any elector owning more than twenty acres subject to assessments within any existing or proposed irrigation district which does not receive any of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres or major fraction thereof, but no elector shall be entitled to cast more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres of land owned by elector in the district.

SECTION 3. AMENDMENT. Section 61-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom - Contents. A petition for a proposed irrigation district shall be filed with the state engineer and shall be signed by landowners of the proposed district who together shall own a majority of the whole number of acres subject to assessment for construction or other costs within the district requesting the territory described in such petition be organized under the provisions of this chapter. Such territory shall be described and shall be included in such district, if established, by legal governmental subdivisions of forty acres or more unless held in fractional lots or plotted units of lesser size, or unless portions thereof are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands which are not contiguous to any other lands in the proposed district. Such petition shall set forth the name and address of each petitioner and a description of his land, and the petition shall have attached thereto a map or maps showing the boundaries of the proposed district.

SECTION 4. AMENDMENT. Section 61-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-08. Petition accompanied by map - Contents - Scale. The petition provided for in section 61-05-07 shall be accompanied by a map or maps of the proposed district. Such The map shall show the location of the proposed canals or conveyance systems and other works by means of which it is intended to irrigate the lands of the proposed district, but canals that merely pass through said lands, and which do not irrigate any of the same, need not be shown. If the water supply is from a natural stream, the flow of such stream shall be stated in cubic feet per second. If the water supply for the district is to be gathered by a storage reservoir or reservoirs, the map shall show the location thereof and shall state their capacity in acre-feet. If the water supply is from a ground water source, the map must show the general location of wells and proposed pumping rates. Unless otherwise permitted by the state engineer, such map shall be drawn to a scale of not less than two inches to the mile. Typical cross sections of the proposed canal or canals, and of all canals existing within the boundaries of the proposed district and shown on the map, and of all proposed dams and embankments, shall be given in sufficient detail to show the contemplated method of construction, and the capacity of the typical canals required for the irrigation of the lands within the proposed district shall be stated. Such cross sections shall be drawn to the scale required by the state engineer, and such map and cross sections shall be certified by an experienced engineer. Preliminary designs of all proposed conveyance systems and other works shall be prepared in sufficient detail to show the contemplated method of construction, along with a feasibility report on the proposed plan of irrigation. The feasibility report must include an analysis of the soil and water compatibility of the irrigable lands of the

proposed district. A registered professional engineer shall prepare the map, preliminary designs, and feasibility report required by this section.

SECTION 5. AMENDMENT. Section 61-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-10. Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors. The state engineer shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing such petition. A notice stating that such petition will be heard, and stating the time and place of hearing, shall be filed with the county auditor of each county wherein such proposed district is located. ~~Such~~ The notice shall be published once each week for two consecutive weeks prior to the date of such hearing in the official newspaper or newspapers of the county wherein the proposed irrigation district is located; and if such district is located in more than one county, then such notice shall be published in the official newspaper of each such county general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the hearing on the petition may not be less than twenty days after the first publication of the notice. Prior to such hearing the state engineer shall review the maps, preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a summary report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within such district. A copy of such report shall be filed with the county auditor of each county wherein the proposed irrigation district is situated and such report shall be open to public inspection. The state engineer also shall submit such report to the electors of the proposed district at the meeting set for hearing the petition for the organization thereof.

SECTION 6. AMENDMENT. Section 61-05-13 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-13. State engineer to make order establishing irrigation district - Calling election - Dividing district - Contents of order. If the state engineer shall have found and determined that the establishment of the proposed irrigation district is advisable, and that the plan proposed for irrigating the lands therein is practicable and economically sound, he shall make an order establishing such irrigation district, subject to the approval of the electors of the district at an election called by the state engineer for that purpose. If the district embraces more than ten thousand irrigable acres [4046.86 irrigable hectares] of land, the state engineer by such order shall divide the district into three, five, or seven divisions or precincts as he shall deem necessary for the convenience of the electors of the district. ~~Such~~ The divisions or precincts shall be as nearly equal in size as may be deemed

practicable, such divisions shall be numbered, and one director shall be elected from, and by the electors of, each division. If an elector owns land in more than one division, he shall cast all his votes for director and be eligible for election as a director in the division in which the majority of his land subject to assessment lies. Such order shall set forth:

1. The time and place of holding such election.
2. The boundaries of the district.
3. That a petition sufficient in form and substance was filed with the state engineer.
4. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.

A copy of such order shall be filed with the county auditor of each county in which the irrigation district is situated. Such order shall be prima facie evidence of the matter and facts therein stated.

SECTION 7. AMENDMENT. Section 61-05-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-14. Notice of election by state engineer - Contents - Publication.

Upon making his order establishing an irrigation district, the state engineer shall give notice of an election to be held in such district for the purpose of determining whether or not the electors of the district approve the establishment and organization thereof as an irrigation district. ~~Such The~~ notice shall state that an elector desiring to be a candidate for the office of district director shall file his or her name with the state engineer not less than ~~ten~~ twenty days before such election. ~~Such The~~ notice shall carry a reference to the map or maps previously filed with the county auditor describing the boundaries of the lands included in the district as established by the state engineer, and shall designate a name for such district. ~~Such The~~ notice shall be filed with the county auditor of each county in which the proposed district is situated and shall be published once each week for two consecutive weeks prior to such election in the official newspaper in the county in which the proposed district is situated. If no official newspaper is published in such county, then it shall be published in the official newspaper in an adjoining county. If the proposed irrigation district is situated in more than one county, such notice shall be published in the official newspaper, if one is published, within each of such counties or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the election shall be not less than twenty-five, nor more than thirty-five, days after the first publication of the notice.

SECTION 8. AMENDMENT. Section 61-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-15. Form of notice of election. The notice of election provided for section 61-05-14 shall be substantially in the following form:

NOTICE OF ELECTION

Notice is hereby given that on the ----- day of -----, 19----, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the state engineer as ----- irrigation district, the question as to whether or not the order of the state engineer establishing such irrigation district shall be approved. Notice is hereby given that the lands of such district are fully described in the order of the state engineer establishing the district and filed in his office at the state capitol in Bismarck, North Dakota, and in the office of the county auditor of ----- county, North Dakota. The ballot will be in the following form:

FOR IRRIGATION DISTRICT

Yes //
No //

Notice is further given that a board consisting of ----- directors will be elected, one from each district division, who will serve as provided by law after the establishment of the district is approved. Polls will be open from one o'clock p.m. to seven o'clock p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and have his name appear on the ballot must file his request in writing with the state engineer not less than ~~ten~~ twenty days before the said election.

Dated this ----- day of ----- 19----

Signed -----
State Engineer.

SECTION 9. AMENDMENT. Section 61-05-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-05-20. Appeal to district court from orders and decisions of the state engineer - Time - Undertaking. An appeal may be taken to the district court from any order or decision of the state engineer by any person ~~claiming to be~~ who is aggrieved thereby, at any time within thirty days after the order or decision appealed from has been filed with the county auditor of the county in which the appeal is taken. Such appeal shall be taken by serving notice of appeal on the state engineer and by filing the notice of appeal, proof of service thereof, and the undertaking required in this section with the clerk of the district court of the county in which the appeal is taken. To effect an appeal an undertaking must be executed by the appellant and sufficient surety 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 made in favor

of the state engineer as obligee and may be enforced by him. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if such land is situated in more than one county such appeal may be taken to the district court of any county in which any part of such land is situated. Any appeal thus taken shall be docketed in the district court as any civil cause commenced in the district court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause, and shall hear and determine the same, without a jury, in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the state engineer or any other party to the cause from any judgment entered in the district court in any such cause, and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

SECTION 10. AMENDMENT. Section 61-06-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

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

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

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more and is divided into seven

divisions or precincts, the board of directors of such irrigation district shall consist of seven directors. Three directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, ~~two and four~~ directors shall serve until the first Tuesday in April following the second regular district election, ~~and two directors shall serve until the first Tuesday in April following the third regular election.~~

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

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

SECTION 11. AMENDMENT. Section 61-06-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-09. Regular election of irrigation districts. The regular election of irrigation districts shall be held on the ~~first~~ second Tuesday in February in each even-numbered year.

SECTION 12. AMENDMENT. Section 61-06-10 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-10. Notice of election after district is organized - Contents - Form. Within ~~thirty~~ thirty-five days of, but at least ~~fifteen~~ twenty-five days prior to, any regular or special election held in an irrigation district, the secretary of the board of directors shall cause a notice of the election to be published in the ~~official~~ official newspaper of each county or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The notice shall specify the matters to be voted upon, the location of the polling place or places, and the time of their opening and closing. Such notice shall be in substantially the following form:

"NOTICE hereby is given that on the ----- day of -----, 19---, an election will be held at ----- (here designate the polling place) for the purpose of electing ----- members of the board of directors and for the purpose of voting upon such questions as shall be submitted by the directors of the district. Polls will be opened at one p.m. and will be closed at five p.m. of that day. Notice is further given that any elector desiring to have his name appear on the ballot must file his request in writing with the secretary of the district not less than twenty days before the election."

SECTION 13. AMENDMENT. Section 61-06-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-13. Ballot at irrigation district elections - Contents. At least ~~five~~ fifteen days before an election in an irrigation district, the secretary shall prepare and have typewritten, mimeographed, or printed, an official ballot containing the names of all candidates which have been filed with him. ~~Such~~ The ballot shall:

1. Be headed "Official Ballot";
2. Contain all names thus filed;
3. Show the name of the district;
4. State the number of persons to be voted for; and
5. Have blank spaces below for writing in other names; and
6. State any question or resolution submitted to the electors by the board of directors.

The provisions of this chapter shall not prevent any person desiring to be a candidate at such election and who has failed to file as provided in this chapter, from furnishing stickers to be attached to the ballot by the electors. Such stickers shall not be over one-

half inch in width and shall have printed thereon one name only. Any elector who will be absent from the irrigation district on the day of the election may vote an absent voter's ballot at that election. The secretary shall provide the official ballot to any elector who makes application for an absent voter's ballot, and the absent voter must submit the absent voter's ballot to the secretary of the district, along with an affidavit that the ballot submitted represents the elector's vote at the election, on or before the day of the election. An absent voter's ballot must be the official ballot, and the ballot and affidavit must be actually delivered to the secretary or the election board before the polls close on election day. The secretary shall submit any absent voter's ballots to the election board on the day of the district election.

SECTION 14. AMENDMENT. Section 61-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-15. Opening and closing hours of polls at irrigation district elections. The polls shall be open at one o'clock p.m. of the election day and for a regular irrigation district election shall be kept open until five o'clock p.m. of the same day.

SECTION 15. AMENDMENT. Section 61-06-17 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-17. Compensation of members of election board. Each member of the election board for an irrigation district election shall receive the sum of ten dollars compensation as fixed by the board of directors for his services.

SECTION 16. AMENDMENT. Section 61-06-21 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-21. Meetings of board - Regular and special - Quorum - Records of board - Publication of proceedings. The board shall hold regular meetings in its office or usual place of meeting on the first Tuesday of in January, March, July, and November in of each year at two p.m. of that day, and may by regulation. The board by rule or bylaw authorized by section 61-07-03, shall fix dates for such regular meetings and may also fix dates for such additional regular meetings as it shall deem needed. The board also may hold such special meetings as may be required for the transaction of the district's business. Special meetings shall be called by the secretary upon the order of the chairman of the board or upon the request in writing of two members. Such The order must be entered of record on the minutes of the meeting and notice of such special meeting shall be delivered or mailed to each member of the board at least five days prior to the date of such special meeting. A special meeting of the board may be called at any time by the chairman without notice and the meeting thus called shall be legal and valid if all members of the board of directors are present. A majority of the members of the board shall constitute a quorum for

the transaction of business, but upon all questions requiring a vote there shall be a concurrence of at least a majority of the board. All records of the board must be open to the inspection of any elector during business hours. The board may publish in one newspaper of general circulation in the district a brief statement of the proceedings of each regular or special meeting if such publication can be made at an expense not exceeding one-third of the legal rate for advertising notices.

SECTION 17. AMENDMENT. Section 61-06-22 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-22. Directors and officers - Salary, mileage, and expenses. Each director shall receive the sum of twenty-five dollars. The compensation for each director per day while performing his duties as a member of the board, and an shall be fixed by the board of directors, but shall be no more than the compensation per day as provided for in section 54-35-10 for members of the legislative council. The allowance for meals and lodging expenses shall be 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, in a manner determined by the board of directors. The salary of the secretary, assessor, and treasurer shall be determined by the board of directors.

SECTION 18. AMENDMENT. Section 61-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-01. Powers and duties of irrigation district. Each irrigation district:

1. Shall be a body corporate;_
2. Shall possess all the powers and duties usual to corporations organized for public purposes and those conferred by the provisions of this title or which may be conferred by law;_
3. May sue and be sued in its corporate name and may institute and maintain any and all actions and proceedings, including suits at law or in equity, necessary or proper, in order to carry out fully the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this title, or acquired in pursuance thereof;_
4. May contract and be contracted with;_
5. May hold, lease, own, and possess such real and personal property as shall come into its possession by contract, conveyance, purchase, gift, or otherwise; and;_

6. May exercise the right of eminent domain for the purpose of acquiring right of way for ditches, flumes, canals, pipelines, and other conveyance systems, sites for dams and reservoirs, wells and well fields, related drainage systems, and for any other purpose or works necessary to establish and construct a complete system of irrigation works.

In all courts, actions, suits, or proceedings, the board of directors may sue, appear and defend, in person or by attorneys, in the name of such irrigation district.

SECTION 19. AMENDMENT. Section 61-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-03. Powers and duties of board of directors. The board of directors of an irrigation district shall ~~have the power and it shall be its duty:~~

1. ~~To manage~~ Manage and conduct the business affairs of the district~~;~~.
2. ~~To make~~ Make and execute all necessary contracts~~;~~.
3. ~~To employ~~ Employ such officers, agents, and employees as may be necessary to conduct efficiently the business of the district and to fix their compensation~~;~~.
4. ~~To adopt~~ Adopt a seal for the district. ~~Such~~ The seal shall be kept in the custody of the secretary~~;~~.
5. ~~To establish~~ Establish bylaws~~;~~ and rules~~;~~ and ~~regulations~~ for distribution to and for the information of electors of the district and water users, and ~~to~~ fix charges or rentals to be paid by water users. ~~Such~~ The bylaws~~;~~ and rules~~;~~ and ~~regulations~~ shall be printed, typewritten, or mimeographed in convenient form~~;~~.
6. ~~To enter~~ Enter upon any land within the district to make surveys and to locate the main lines of any canal or canals and the necessary branches for such canal or any canals, pipelines, or other conveyance systems, and ~~to~~ maintain and keep in good repair the irrigation works within the district. Its agents and employees shall have the same right~~;~~.
7. ~~To acquire~~ Acquire by purchase, condemnation, or otherwise:
 - a. Rights of way for ditches, canals, pipelines, and other conveyance systems and sites for dams and reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and for pumping plants;

- b. All lands, ~~water rights~~, easements, and any and all property necessary for the construction, use, maintenance, repair, and improvement of dams, reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and canals, pipelines, and other conveyance systems; and
- c. Electric powerlines for the conveyance of electric power to operate pumping plants and all necessary appurtenances thereto; and
- d. Water rights, but the board shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to the holder of any water rights which have been condemned.
8. Subject to the limitations contained in this chapter, ~~to~~ acquire by purchase, condemnation, or otherwise, any existing irrigation works, ~~ditches, canals, reservoirs,~~ and dams for the use of the district, ;
9. ~~To submit~~ Submit, whenever the board shall deem it advisable, to the electors of the district, at any regular or special election, any question, proposition, or proposal relative to the affairs of the district, ;
10. ~~To accept~~ Accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or of any department or agency thereof, or authorization by the United States, or of any department or agency thereof, to make collections of money for and on behalf of the United States in connection with any federal reclamation or irrigation project. ~~Such~~ The board shall have full power to do any and all things required by the rules ~~and~~ regulations established by any such department or agency of the federal government relative to such project, ;
11. Subject to the limitations provided in this title, ~~to~~ determine a plan or method for raising funds to finance the cost of constructing irrigation works within the district or to provide funds for the purchase of such irrigation works. ~~Such~~ The plan may provide for the issuance of bonds, or the issuance of district improvement warrants, or the payment of such construction costs, or purchase price, by creating a fund obtained from water rentals or charges to water users, or for a combination of such methods for raising funds, ;
12. ~~To exercise~~ Exercise all rights, powers, and authority, express or implied, that may be necessary to do and perform and carry out all of the express purposes of this chapter and of all purposes reasonably implied as incidental thereto, ;

13. ~~To enter~~ Enter into contracts and leases with the water conservation commission of North Dakota or with the United States of America, its instrumentalities, departments, or agencies, for the purpose of financing the construction of any irrigation works authorized by law, and in such contracts and leases may authorize such commission or the United States, its instrumentalities, departments, or agencies, as the case may be, to supervise and approve the construction, maintenance, and operation of such irrigation works, or any part or portion thereof, until such times as any money expended, advanced, or loaned by the commission or by the United States, its instrumentalities, departments, or agencies, and agreed to be repaid thereto by said board, shall have been repaid fully. The board may accept cooperation from such commission or from the United States, its instrumentalities, departments, and agencies, in the construction, maintenance, and operation, and in financing the construction of any work authorized by the board. The board shall have full power to do any and all things necessary to avail itself of such aid, assistance, and cooperation under existing or future state laws or federal legislation enacted by Congress.

SECTION 20. AMENDMENT. Section 61-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-04. Construction across streams, highways, railroads, and ditches - Right of way. The board may construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, ~~or~~ flume, pipeline, or other transportation system or utility, which the route of any canal may intersect or cross in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a manner sufficient to avoid unnecessary impairment of its usefulness. Every company whose railroad or utility shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If the board cannot agree with such railroad company, or with the owners and controllers of the property, thing, or franchise to be crossed, upon the amount to be paid on account of such crossing or the point at which or the manner in which the crossing shall be made, the same shall be ascertained and determined in all respects as is provided for the taking of land. The right of way is given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state. There are given, dedicated, and set apart, for the uses and purposes provided in this chapter, all water and water rights owned by this state within the district.

SECTION 21. AMENDMENT. Section 61-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report. For the purpose of ascertaining the cost of any construction work in a district, the board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the direction of a competent irrigation registered professional engineer, who may be the state engineer, and shall be certified by him. The board then shall submit a copy of the same to the state engineer who shall prepare a summary report thereon and file the same with the board. Such report shall contain such matters as in the judgment of the state engineer may be desirable. Upon receiving such report, the board of directors shall proceed to determine the amount of money required to be raised.

SECTION 22. AMENDMENT. Section 61-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-09. Advertising for bids - Letting contract - Bond required. After adopting a plan of ~~the canal or canals, storage reservoirs, and irrigation works,~~ the board shall give notice, by publication at least once, not less than fifteen days before bids are received, as provided in this chapter, in such newspaper or newspapers as it deems advisable, calling for bids for the construction of the work or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be described particularly in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, that the board will receive sealed proposals therefor, that such proposals will be opened at the time and place fixed in the notice, and that the contract will be let to the lowest responsible and best bidder. The proposals, at the time and place specified, shall be opened in public. As soon as convenient thereafter the board shall let such contract either in part or as a whole to the lowest responsible and best bidder, or it may reject all bids and readvertise for proposals, or it may proceed to construct the work under its own superintendence with the labor of the residents of the district. Contracts for the purchase of materials shall be awarded to the lowest responsible and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to twenty-five percent of the contract price, conditioned for the faithful and complete performance of the contract, except that in case twenty-five percent of the contract price shall exceed the sum of fifty thousand dollars, then such bond shall be in the sum of fifty thousand dollars. The work shall be done under the direction and to the satisfaction of the engineer and shall be approved by the board. The provisions of this section shall not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water conservation commission.

SECTION 23. AMENDMENT. Section 61-07-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-15. District may obtain financial aid from United States. Any irrigation district organized under the laws of this state for irrigation ~~or drainage~~ purposes may enter into a contract with the United States whereby the bonds of the district are guaranteed by the United States, or financial credit is extended by the United States to the district for the sale, purchase, or use of any ~~canal, ditch, reservoir, right of way,~~ irrigation, ~~or works and related drainage system systems,~~ and any other property owned or to be acquired for the use of such district.

SECTION 24. AMENDMENT. Section 61-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-16. Irrigation district ~~may shall~~ provide for proper drainage of lands - Payment. Any irrigation district organized under the provisions of this title shall provide for the proper drainage of any and all lands embraced within its limits which are, or have been, subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated, or from any cause which is not the fault, or by which does not have the consent, of such owner or lessee. For such purpose, such district shall have all the authority granted in this title to:

1. Levy special assessments or otherwise provide funds necessary properly to drain such lands;
2. Enter upon lands for the purpose of making surveys;
3. Exercise the right of eminent domain;
4. Contract for the construction of necessary ~~ditches drains;~~ and
5. Extend such ~~drainage ditches drains~~ outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be used lawfully or to return the same to some natural watercourse.

The powers granted by this section shall include the power to enter into a contract with the United States to carry out and effectuate all proper drainage of the district, or any part thereof, and any such contract shall be treated to all intents and purposes as if made under section 61-07-14.

SECTION 25. AMENDMENT. Section 61-07-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-18. Duty of board to keep ditches ~~flowing continuously~~ provide water supply. ~~The~~ When the water supply of an irrigation district can be applied beneficially to the lands in the district,

the board shall keep the waters flowing through the ditches and canals irrigation works under its control to the full capacity of such ditches and canals the irrigation works in times of high sufficient water and when the same can be applied beneficially to the lands thereunder and supply but without interfering with the rights of ether senior appropriators.

SECTION 26. AMENDMENT. Section 61-07-19 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-19. Petition for specific orders or changes in canals or other conveyance systems - Methods. Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres [hectares] subject to assessment for construction or other costs, requesting that rules and regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, pipeline, or other conveyance system, such board immediately shall provide for the adoption and enforcement of the same:

1. That a measuring device of a type approved by the state engineer be placed in or near the headgate of any main diverting gate of the main canal, or in any pipeline, or other main conveyance system in order that a continuous record shall be kept by such district of the amount of water received into the canal or pipeline for the use of the lands in such district.
2. That a measuring device of a type approved by the state engineer be placed in the headgates or valves of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres [8.09 hectares], or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that it be made the duty of the superintendent of the canal district to keep a separate and correct record of the amount of water delivered through each of such headgates and valves at all times, and to file the same in the office of the board for public inspection.

SECTION 27. AMENDMENT. Section 61-07-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-20. Provisions of title not to take away vested rights. None of the provisions of this title relating to irrigation ditches works shall be deemed to authorize the district or any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, whereby the vested rights of any person having any interest in such river, creek, stream, canal, or ditch, or the waters thereof, are invaded or interfered with unless previous compensation is ascertained and paid therefor, under the laws of this state

authorizing the taking of private property for public use. However, if the district exercises the authority of eminent domain against any vested water rights of any person, the district shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to such person.

SECTION 28. AMENDMENT. Section 61-07-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-33. Appeal to district court - Time - Notice - Undertaking required - Docketing. An appeal may be taken to the district court from any order or decision of the board of an irrigation district, by any person ~~claiming to be who is~~ aggrieved thereby, at any time within thirty days after the order or decision appealed from has been made by the board, and filed with the secretary, and served by registered or certified mail upon the interested landowners. Such appeal shall be taken by serving notice of the appeal on the chairman or the secretary of the board and by filing the notice, proof of service thereof, and the undertaking required in this section, with the clerk of the district court of the county in which the appeal is taken. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety 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 made in favor of the irrigation district as the obligee and may be enforced by the district. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if such land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of such land is situated. Any appeal thus taken shall be docketed in the district court as any civil cause commenced in the district court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause, and shall hear and determine the same, without a jury, in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the irrigation district or any other party to the cause from any judgment entered in the district court in any such cause and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

SECTION 29. AMENDMENT. Section 61-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-05. Majority of ~~ballots~~ votes favoring issuance of bonds - Duty of board. If a majority of the ~~ballots~~ votes cast at a bond election are in favor of the proposal to issue bonds as stated in the initial resolution, the board of directors shall proceed to sell, issue, and deliver such bonds as provided in this chapter.

* SECTION 30. AMENDMENT. Section 61-08-12 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-12. Advertising required before district sells issue of bonds - Contents of notice - Who to receive notice. No irrigation district shall enter into any contract for the sale of any issue of its bonds which exceeds the total sum of one hundred thousand dollars without first advertising for bids in the manner prescribed in this section. A notice calling for bids shall be published at least once in the official paper of one of the counties newspaper of each county in which the district is situated not less than fifteen days nor more than thirty days before the date specified therein for receiving such bids. Such the notice may be in any form but shall specify the amount of bonds offered for sale and the date or dates of the maturity thereof, and such the notice shall specify that the bids shall be sealed and in writing, and shall state the time when and place where such bids will be received and will be opened. A copy of such the notice shall be mailed to the tax commissioner at Bismarck not less than ten days before the date specified for the opening of bids. Failure to publish such the notice or to send a copy thereof to the tax commissioner shall not impair the validity of such the bonds but shall render unenforceable any executory contract entered into for the sale thereof.

SECTION 31. AMENDMENT. Section 61-08-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-25. Bonds, improvement warrants, and contracts payable from assessments of real property and from water charges. Bonds or improvement warrants issued by any irrigation district, and the interest thereon, and contracts not payable in bonds or improvement warrants, made and entered into by the district for the acquisition of irrigation works already constructed, or for the establishment and construction of irrigation works, or any part thereof, shall be paid from the revenue obtained from special assessments upon the real property of the district and or from any other revenue available for that purpose obtained from charges to water users, and or from the sale of water to any person, firm, corporation, municipality, or other irrigation district, or by a combination of special assessments and water charges.

SECTION 32. AMENDMENT. Section 61-08-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-08-32. District treasurer to make monthly report to board - Verifying and filing. The district treasurer shall report to the board in writing on the first Monday of each month as often as the board may require in its bylaws, the amount of money in the district treasury, the amount of receipts for the month preceding since the previous report, and the amount and items of expenditures. Such report shall be verified and filed with the secretary of the board.

* NOTE: Section 61-08-12 was also amended by section 148 of House Bill No. 1058, chapter 82.

SECTION 33. AMENDMENT. Section 61-09-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-09-01. District assessor to examine tracts of land to fix annual assessments levied thereon. Between the first Monday in March and the first Monday in June of each year, the district assessor shall examine each tract of land or legal subdivision of land in the district, including entered and unentered public lands of the United States, subject thereto under any act of Congress, and all other lands publicly or privately owned. For each of such tracts or subdivisions, he in determining benefits, the district assessor shall first ascertain the number of irrigable acres [hectares] within each tract or subdivision, as determined by the board of directors, and this shall form the primary basis for determining the benefits accruing on account of the construction, acquisition, or operation of irrigation works. In addition, the district assessor shall include such factors as methods of irrigation, power consumption, water conservation, and whether or not irrigable acres [hectares] are actually being irrigated. Thereafter, the amount of benefits so apportioned or distributed to each tract of land as finally determined and equalized shall be and remain the basis for fixing the annual assessments levied during that year against such tracts or subdivisions in carrying out the provisions of this chapter.

SECTION 34. AMENDMENT. Section 61-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-09-02. District assessor to make list or prepare map to show apportionment of assessments - Filing. The assessor shall make, or cause to be made, a list showing the apportionment or distribution of assessments, and containing a description of each unit or tract of land assessed in the district, and the name of the record owner thereof, or he may prepare a map on a convenient scale showing each unit or tract of land with the amount per acre apportioned thereto. Such units of land shall, wherever practicable, consist of governmental subdivisions of forty acres or more. Where all lands on such statement or map are assessed at the same amount or rate per acre, a general statement to that effect shall be sufficient. A copy of such list or map shall be filed in the office of the county auditor of each county in which the district is situated, one copy shall be filed in the office of the state water conservation commission engineer, and one copy shall remain in the office of the board for public inspection.

SECTION 35. AMENDMENT. Section 61-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-09-03. Assessments spread in proportion to benefits received - Property subject to assessment for deficiency. Whenever any assessment is made within an irrigation district it shall be apportioned to and spread upon each unit or tract of land in the district in proportion to the benefits received, as determined by the assessor in

accordance with section 61-09-01. Benefits accruing to each unit or tract of land shall be apportioned thereto on the basis of the number of irrigable acres therein. Bonds, district improvement warrants, and other obligations incurred by the district shall be the obligations of the district. Only lands within the district benefited by irrigation and subject to assessment for irrigation benefits shall be subject to assessment for any deficiency in any fund created for the payment of bonds, district improvement warrants, and other district obligations. All assessments approved and levied by an irrigation district for any fund or purpose under the authority of this title shall be in the form of special assessments, and shall be levied against both privately and publicly owned lands.

SECTION 36. AMENDMENT. Section 61-09-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-09-13. Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations. If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause funds raised through the collection of such assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works therein, the board may borrow additional funds needed to an amount not to exceed fifty cents one dollar per acre for the irrigable lands within the district and may pledge the credit of the district for the payment of the same, or the board may issue and register warrants in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay such loan or to retire such warrants.

* SECTION 37. AMENDMENT. Section 61-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-09-20. How rate of special assessment determined - Entering upon assessment roll - Payment of assessment money when collected. The rate of assessment determined by a special election as provided in section 61-09-18 shall be ascertained by adding to the amount estimated to be needed fifteen percent thereof for anticipated delinquencies, and then dividing the sum to be raised by the amount of the assessed value of the property in the district as it appears on the assessment roll for the current year. The assessment so levied and computed shall be entered upon the assessment roll and upon the tax list by the county auditor and collected at the same time and in the same manner as other assessments and apportioned in the manner as provided in this chapter, specifically sections 61-09-01 through 61-09-03, for all special assessments which an irrigation district has the authority to levy.

SECTION 38. AMENDMENT. Section 61-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-01. Change of district boundaries - Effect. The boundaries of any irrigation district may be changed and tracts of land not

* NOTE: Section 61-09-20 was also amended by section 87 of Senate Bill No. 2071, chapter 593.

included within the district may be added to the district, or tracts of land included within the boundaries of such district at or after its organization may be excluded therefrom from the district, in the manner prescribed in this chapter, but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges. It shall not affect nor discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made, or had no land been excluded from the district.

SECTION 39. AMENDMENT. Section 61-10-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-05. Payment of share of original cost by petitioners required. The board to which a petition for the change in the boundaries of inclusion of lands into a district is presented may require, as a condition precedent to the granting of the same, that the petitioners severally shall pay to such district such respective amounts, as nearly as the same can be estimated, the several amounts to be determined by the board, as said petitioners or their grantors would have been required to pay to such district as assessments, had such lands been included in such district at the time the same originally was formed.

SECTION 40. AMENDMENT. Section 61-10-12 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-12. Authority of guardians, personal representatives, and conservators on proposal to change boundaries of district. A guardian, conservator, or personal representative who is appointed as such under the laws of this state, and who is thereby entitled to the possession of the lands belonging to the estate which he represents, on behalf of his ward or the estate which he represents, or upon being authorized by the proper court, may sign and acknowledge the petition provided in this chapter, and or he may show cause, as mentioned in this chapter, why the boundaries of the district should not be changed.

SECTION 41. AMENDMENT. Section 61-10-25 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-25. Notice of filing of petition and hearing thereof - Cost of proceedings. The secretary of the board of directors shall cause notice of the filing of a petition for the inclusion of land in an irrigation district to be published in the manner provided for a regular election of the district. The notice shall state the name or names of petitioners, a description of lands mentioned in the petition, and the prayer of the petition. It shall notify all persons interested in or affected by the proposed inclusion of lands in the district, to appear at the time and place specified in the

notice and to show cause, in writing or in person, if any they have, why the lands described in the petition, or any part thereof, should not be included in the irrigation district. The board may require the petitioners to advance to the secretary of the district sufficient money to pay the estimated cost incurred in the proceedings of the proposed inclusion of land.

SECTION 42. AMENDMENT. Section 61-10-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-26. Hearing of petition - Assent of parties. The board of directors of the district, at the time and place mentioned in the notice of hearing ~~of~~ on the petition, or at such time to which the hearing of the petition may be adjourned, shall proceed to hear such petition and shall receive and consider all objections presented by any elector in the district or other affected person to the inclusion therein of lands described in the petition or any part thereof. The secretary of the board shall take note of all objections and include the same in his minutes of the meeting. The failure of any elector in the district to appear and object at the hearing, or to file with the board his objection in writing before or at the hearing, shall be deemed to be an assent on his part to the inclusion of such lands.

SECTION 43. AMENDMENT. Section 61-10-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-32. Petition for exclusion of land from irrigation district - Bond - Contents. The owner or owners of a tract or tracts of land in an irrigation district may file with the board of directors of the district a petition ~~praying~~ requesting that such tract or tracts of land be excluded from the district. ~~Such~~ The petition shall be accompanied by a sufficient bond conditioned that the petitioner or petitioners will pay all costs incurred by the board in connection with the proceeding resulting from the filing of such petition. The petition must describe each tract of land sought to be excluded from the district. ~~Such~~ The petition shall be recorded in the minutes of the board. The filing of a petition with the board requesting the exclusion of lands from the district is deemed an assent by each petitioner to the exclusion from the district of the lands described in the petition, or any part thereof. Any unit or tract of land mentioned in the petition which does not include within its boundaries acreage [hectarage] susceptible of irrigation by the irrigation works of the district may not be assessed or taxed by the district and may be excluded therefrom.

SECTION 44. AMENDMENT. Section 61-10-33 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-33. Notice of hearing of petition. The secretary of the board of directors shall cause notice of the filing and hearing of a petition for exclusion of lands from an irrigation district to be published in the manner provided for a regular election of the

district. The notice shall state (1) the names of petitioners, (2) the description of each tract of land mentioned in the petition, and (3) the prayer of the petition. The notice shall notify all persons interested in or affected by the proposed exclusion of lands from the district, to appear at the time and place specified therein and show cause in writing or in person, if any they have, why the lands described in the petition should not be excluded. If a petition requesting the exclusion of lands does not describe any lands which are susceptible of irrigation by the irrigation works of the district, the board may exclude the lands from the district without notice or hearing.

SECTION 45. AMENDMENT. Section 61-10-38 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-10-38. Redivision of district. When lands are excluded from an irrigation district by means of the procedure described in this chapter, and if the district will contain less than ten thousand irrigable acres [4046.86 irrigable hectares] or more after the exclusion of such lands, the board of directors thereof shall issue an order dividing the eliminating district into divisions in conformity with section 61-05-13. Such divisions shall be as nearly equal in size as may be practicable, and they shall be numbered, with one director thereafter elected by and from each division. This same order, with the attendant requirements specified in this section, shall be issued if the board of directors formally declares a change in land classification that significantly alters the number or location of irrigable acres {hectares} within the district.

SECTION 46. AMENDMENT. Section 61-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-11-03. Ballots to be provided - Form. The board shall provide printed, typewritten, or mimeographed ballots for an election held pursuant to the provisions of this chapter. Such ballots shall be substantially in the following form:

The irrigation district of ----- County, North Dakota, shall be dissolved and its property sold:

Yes //
No //

The board shall cause such ballots to be prepared and placed at least fifteen days before the election and shall place the ballots in the hands of the election officers of the district prior to the opening of the polls on the day of such election.

SECTION 47. AMENDMENT. Section 61-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-11-05. Procedure when election favors dissolution - Notice to file claims against district - What claims barred. If a majority of the votes cast at the election are in favor of dissolving the district, the

board shall cause to be published in the official newspaper of the county, if there is one, and if there is no such newspaper, then in such newspaper as the board shall designate or newspapers of general circulation where the district is located, and in the official newspaper of each county in which the district is located, a notice to the creditors of the district, except holders of district bonds or district improvement warrants, requiring any person having a claim against the district to submit and file such claim with the secretary of the board within one year after the first publication of the notice, at the place specified in such notice. The notice shall be published as many times as the board shall direct, but not less than once each week for three consecutive weeks. The secretary of the district shall mail, or cause to be mailed, by registered or certified mail, a copy of such notice to each creditor, except any holder of district bonds or district improvement warrants, known to him or of record in his office. After such notice is given, a copy thereof with the affidavit of publication and affidavit of mailing shall be filed in the office of the secretary of the district. Any claim not thus presented, except any claim of a holder of district bonds or warrants, shall be barred forever against such district and against all officers thereof or property therein. None of the provisions of this chapter shall be construed to limit or impair the rights of owners or holders of district bonds or district improvement warrants.

SECTION 48. AMENDMENT. Section 61-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-11-08. Sale of district property authorized - Appraisers appointed - Oath - Compensation. If a majority of the votes cast at an election for dissolution of a district favor dissolution and sale, the ~~canals~~ irrigation works, franchises, and other property of the district may be sold at not less than a valuation to be determined by a board of three appraisers. One member of such board of appraisers shall be appointed by the board of directors of the district, one shall be appointed by the state engineer, and the two appraisers thus selected shall choose the third appraiser. The board of appraisers shall be sworn by an officer who is authorized to administer oaths and who has an official seal. Such board shall appraise the ~~canals~~ irrigation works, franchises, and all other property of the district at its cash value, and to determine such value, with the consent of the board of directors of the district, may employ engineers, accountants, and such expert assistance as may be necessary. The compensation of such appraisers, engineers, accountants, and others shall be fixed by the board of directors. ~~The board of directors shall fix the compensation of the appraisers, but such compensation shall not exceed ten dollars per day and necessary expenses for each day engaged in such work.~~

SECTION 49. AMENDMENT. Section 61-11-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-11-11. Sale or transfer of property authorized. In carrying out the provisions of this chapter, for the discontinuance of an

irrigation district and the sale of its property and assets, the board may sell, transfer, and convey all of the ~~canals~~ irrigation works, franchises, and other property owned by the district to the purchaser thereof.

SECTION 50. AMENDMENT. Section 61-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-11-13. Sale does not affect vested water rights --~~Appurtenant riparian rights continue.~~ The sale of the ~~canals~~ irrigation works, franchises, and property of an irrigation district shall not affect or impair vested water rights, and the right to the use of water acquired under the laws of this state shall be ~~and remain appurtenant to the irrigated land assigned to the purchaser of the irrigation works of the district or to the individual electors of the district in accordance with section 61-04-15.~~ Chapter 61-04 governs all water permits and water rights acquired by an irrigation district, including any water permits or water rights which may be assigned by an irrigation district.

SECTION 51. AMENDMENT. Section 61-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-13-02. Powers of corporations organized under chapter. A corporation organized for irrigation purposes shall have the power ~~to~~ may:

1. Engage in any corporate activity not otherwise prohibited by law and not inconsistent with the purposes mentioned in section 61-13-01~~7~~1.
2. Acquire water rights, easements, sites, and all means, property, machinery, and equipment necessary or required in connection with the operation and maintenance of an irrigation system~~7~~1.
3. Establish, construct, maintain, and operate pumping plants, wells, pipelines, canals, and ditches and all other necessary facilities required for the appropriation of water and the operation and maintenance of an irrigation system~~7~~1.
4. Borrow money in an amount, whether in excess of the amount of its capital stock or not, necessary to enable it to carry out the intent and purposes for which it is organized, and as security for the payment of any loan, to pledge or mortgage real or personal property acquired by the proceeds of such loan, or otherwise, including future earnings or income of the corporation~~7~~1.
5. Acquire, purchase, or lease water rights, franchises, ~~canals, ditches, pumping plants,~~ and irrigation works and facilities, or any part thereof, from any person, firm,

- corporation, or irrigation district, and from any state or federal agency;_
6. Furnish water for irrigation or domestic use, to its members or stockholders, and to furnish and sell water to any person, firm, or corporation;_
 7. Adopt bylaws and rules and regulations for the furnishing of water, and for charges to be made therefor;_
 8. Levy assessments against its members or stockholders necessary for the maintenance and operation of the irrigation system, if one is established and maintained;_
 9. Fix rates of tolls and charges for water, to collect the same, to require that charges for water be paid in advance of the irrigation season, to suspend the delivery of water to any land for the irrigation of which the charges and tolls have not been paid, and to provide for the suspension of water delivery to any land upon which assessments, apportioned and levied, remain unpaid for one year after having become due and payable;_
 10. Enter into contracts with any person, firm, association, corporation, irrigation district, this state, or any department or agency thereof, or the United States, or with any department or agency of the United States, for supplying water for the irrigation of the lands of its members or stockholders. Such supply of water may be either the entire supply of water necessary to irrigate said lands or to supplement waters supplied or controlled by the corporation;_
 11. Do each and every thing necessary, suitable, or proper for the accomplishment of any one or more of the objects enumerated in this section, and to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the corporation is organized, or to the activities in which it is engaged; and;_
 12. Exercise any other rights, powers, and privileges not inconsistent with the purposes of this chapter granted by this state to ordinary corporations or to mutual aid corporations organized under the provisions of chapter 10-12 of the title Corporations.

SECTION 52. AMENDMENT. Section 61-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-01. Units of measurement. The standard of measurement of the flow of water shall be the cubic feet per second of time. The standard of measurement of the volume of water shall be the acre-foot; being the amount of water upon an acre covered one foot deep; equivalent to forty-three thousand five hundred sixty cubic feet.

The miner's inch shall be regarded as one fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been stated specifically or by contract, or has been established by actual measurement or use. The standard of measurement for the flow and volume of water shall be established by rule by the state engineer.

SECTION 53. AMENDMENT. Section 61-14-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-03. Amount of water for irrigation. ,In the issuance of a permit to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount of water allowed by the state engineer shall not be in excess of the rate of one cubic foot {28.32 liters} two acre-feet [56.64 liters] of water per second for each eighty acres {32.37 hectares}, for a specified time in each acre [.40 hectare] per year, or the equivalent thereof, delivered on the land. Provided, that the state engineer may allow a higher rate of diversion where the method of irrigation stipulated in the permit or the type of soil to which the water is to be applied so requires, but in such event, the total amount allowed shall not be in excess of two acre-feet per acre {2,466.96 cubic meters per .40 hectare} delivered to the land for any one irrigation season, and in no case more than can be used beneficially, except that during periods of sufficient water supply the state engineer, in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre [3,700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply. Notwithstanding any other provision of this section, the state engineer may not allow more of an amount of water than can be beneficially used.

SECTION 54. AMENDMENT. Section 61-14-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-07. Unlawful interference with rights to use of water - Penalty. Any person interfering with or injuring or destroying any headgate, weir, benchmark, well, or other appliance or works for the appropriation, diversion, storage, apportionment, or measurement of water, or for any hydrographic or hydrologic surveys, or who shall interfere with any person engaged in the discharge of duties connected therewith, shall be guilty of a class A misdemeanor, and also shall be liable for the injury or damage resulting from such unlawful act. The state engineer and the person in charge of an irrigation work, and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, but shall do no unnecessary injury thereto.

SECTION 55. AMENDMENT. Section 61-14-08 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-08. Unlawful use of water and waste - Penalty. The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be unlawful. It also shall be unlawful to begin or carry on any construction of works for storing or carrying water until after the issuance of a permit to appropriate such waters, ~~except in the ease of construction carried on under the authority of the United States.~~ The penalty for any violation of this section is a class A misdemeanor.

SECTION 56. AMENDMENT. Section 61-14-09 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-09. Bridges over ditches or canals - Penalty. The owner of any ditch, canal, or other structure for storing or carrying water, shall construct and maintain a ~~substantial~~ bridge where the same crosses any highway or publicly traveled road, ~~not less than fourteen feet {4.27 meters} wide~~ in accordance with the requirements of the state agency or political subdivision which has control over the road, or shall reconstruct the road in a substantial manner and in a convenient location for public travel. The board of county commissioners shall be authorized to construct any bridge or road, if not built by the owner of the works within three days after the obstruction of the road, and may recover the expenses thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The board of county commissioners may make reasonable requirements as to the size and character of any such bridge along a public highway, or for the necessary reconstruction of such a road, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the board of county commissioners.

SECTION 57. AMENDMENT. Section 61-14-15 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-15. Unauthorized diversion of water from irrigation ditches - Penalty. ~~It shall be an infraction is unlawful~~ for any person to divert any of the water from any irrigation ditch works in this state ~~or interfere in any manner whatever with any irrigation ditch~~ without first having obtained the permission of the owner of ~~such ditch~~ the works or of the person or persons lawfully in charge thereof.

SECTION 58. REPEAL. Section 61-10-16 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1983

CHAPTER 681

SENATE BILL NO. 2344
(Heigaard)

NONCOMPLYING DRAIN CLOSURE COMPLAINT

AN ACT to amend and reenact section 61-16.1-52 of the North Dakota Century Code, relating to the closing of noncomplying drains.

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

SECTION 1. AMENDMENT. Section 61-16.1-52 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-52. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such period as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining

the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under section 61-16.1-54 through 61-16.1-57. A hearing as provided for in this section shall not be a prerequisite to such an appeal.

Approved April 8, 1983

CHAPTER 682

HOUSE BILL NO. 1636
(Kloubec)

STRUCTURES WITHIN FLOODWAY

AN ACT to repeal section 61-16.2-07 of the North Dakota Century Code, relating to prohibited uses within a floodway.

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

SECTION 1. REPEAL. Section 61-16.2-07 of the 1981 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 10, 1983

CHAPTER 683

SENATE BILL NO. 2257
(Tweten)

DRAIN REPAIR LEVY

AN ACT to amend and reenact section 61-21-46 of the North Dakota Century Code, relating to the maximum levies allowed for cleaning and repairing drains.

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

* SECTION 1. AMENDMENT. Section 61-21-46 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-46. Maximum levy - Accumulation of fund. The levy in any year for cleaning out and repairing a drain shall not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. 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 one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property shall be assessed an amount not to exceed one dollar for each one thousand dollars of assessed valuation of such nonagricultural property. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. If the cost of, or obligation for, the cleaning and repair of any drain shall exceed the total amount which can be levied by the board in any two-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 prior to obligating the district for such costs.

Approved March 4, 1983

* NOTE: Section 61-21-46 was also amended by section 88 of Senate Bill No. 2071, chapter 593.

CHAPTER 684

SENATE BILL NO. 2103
 (Committee on Political Subdivisions)
 (At the request of the Secretary of State)

ELECTION OF DIRECTORS OF GARRISON DIVERSION CONSERVANCY DISTRICT

AN ACT to amend and reenact section 61-24-03 of the North Dakota Century Code, relating to election of directors of the Garrison Diversion Conservancy District.

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

SECTION 1. AMENDMENT. Section 61-24-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-03. Election of directors of the Garrison Diversion Conservancy District. A director of the Garrison Diversion Conservancy District shall be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison Diversion Conservancy District shall, not more than ~~sixty-six~~ seventy days or less than ~~forty-six~~ fifty-five days and before four p.m. of the ~~forty-sixth~~ fifty-fifth day prior to any primary election preceding a general election at which a director of the district is to be elected, present to the county auditor a petition giving his name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District," and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added his residence with street number, if any, and the date of signing.

The petition shall be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA,
 County of _____

I, _____, being duly sworn, depose and say that I reside in the county of _____ and State of North Dakota; that I am a qualified voter therein; that I am a candidate for nomination to the office of director of the Garrison Diversion Conservancy District to be chosen at the primary election to be held on the _____ day of

_____, 19__, and I do hereby request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for said office.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public, North Dakota

Upon receipt of the petition the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the aforesaid office of director. The two candidates receiving the highest number of votes if more than two are running shall be nominated.

The names of the candidates so nominated at the primary election shall be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes shall be duly elected.

At the primary and general elections votes shall be canvassed, returned certified, and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers.

Approved February 9, 1983

CHAPTER 685

SENATE BILL NO. 2251
(Committee on Natural Resources)
(At the request of the State Water Commission)

SOUTHWEST PIPELINE PROJECT

AN ACT to confirm and approve the preliminary designs for the southwest pipeline project and to authorize the construction of the southwest pipeline project; to empower the state water commission to operate and maintain the southwest pipeline project and distribute water through the southwest pipeline project to water user entities, including municipalities, rural water associations, and other water user entities; to provide for the deposit of revenues from the sale of water from the southwest pipeline project; to create funds for operation and maintenance of the southwest pipeline project and replacement of the southwest pipeline project; and to provide an appropriation.

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

SECTION 1. Legislative findings and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this Act, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including, but not limited to, domestic, rural, and municipal uses. The provisions of this Act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but shall be supplementary thereto. Nor shall this Act be construed as limiting

or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

SECTION 2. Definitions. In this Act:

1. "Commission" means the state water commission.
2. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the commission for the purchase of water from the commission through the southwest pipeline project.

SECTION 3. Authorization of southwest pipeline project. The preliminary designs for a water supply facility for supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River for multiple uses, as set forth in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, are hereby confirmed and approved, under the designation of the southwest pipeline project, and the construction of the southwest pipeline project shall be initiated and completed by the state water commission substantially in accordance with plan B of the engineering preliminary design final report, state water commission project no. 1736, dated September 1982, except as otherwise specifically provided in this Act. The commission shall have the authority to eliminate the construction of any primary or secondary transmission mains which are part of plan B of the engineering preliminary design final report if the water user entities to be served by the primary or secondary transmission mains do not execute water service contracts for the purchase of a sufficient quantity of water, as determined by the commission, to justify the construction of the primary or secondary transmission mains. Chapter 49-22 shall not apply to this Act. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state.

SECTION 4. Water treatment. As provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September, 1982, the construction of the southwest pipeline project includes a single water treatment plant near the source for treatment of water. The extent and type of water treatment for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served.

SECTION 5. Intake structure. The intake structure to be utilized for the withdrawal of water from the water source for the southwest pipeline project shall be determined by the commission, as

in the judgment of the commission the interests of the state and water user entities of the southwest pipeline project are best served. In making its determination on the selection of the intake structure, the commission shall consider, among other things, cost, project stability, capacity and ability to withdraw water, and flexibility in delivering water to water user entities.

SECTION 6. Secondary transmission mains. Secondary transmission mains shall be constructed as part of the southwest pipeline project, as provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, except as provided in section 3 of this Act.

SECTION 7. Capacity for industrial use. Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user. Any large industrial user shall pay, in the manner determined by the commission, at least the proportionate costs of the project based on the large industrial user's proportionate capacity of the southwest pipeline project. In this section, large industrial user means an industrial user which uses 724 acre-feet of water or more each year for industrial purposes, including, but not limited to, electrical generation or energy conversion facilities.

SECTION 8. Capacity for South Dakota users. Upon receipt of a commitment from water user entities in South Dakota, through the execution of a water service contract for the purchase of water from the southwest pipeline project, whereby no less than the total additional capital costs of increasing the capacity of the southwest pipeline project to provide water through the southwest pipeline project for the water user entities in South Dakota will be paid by the water user entities in South Dakota, the commission shall have the authority to include in the southwest pipeline project the additional capacity for water user entities in South Dakota as provided in plans SD of the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, and to determine the rates and charges for the operation and maintenance costs of delivery of water to such water user entities.

SECTION 9. Pipeline construction standards. The commission, as in its judgment the interests of the state and the water user entities of the southwest pipeline project are best served, shall determine the pipeline construction standards to be utilized for the southwest pipeline project. In making its determination, the commission shall consider cost, maintenance, life of pipelines, and other factors it deems appropriate.

SECTION 10. State water commission to operate and maintain southwest pipeline project - Rules made by commission. The state water commission shall have the authority to:

1. Construct the southwest pipeline project as provided in this Act.
2. Operate and maintain, or provide for the operation and maintenance of the southwest pipeline project.
3. Exercise all express and implied rights, powers, and authorities, including all powers and authorities granted in chapter 61-02, necessary to carry out the provisions and purposes of this Act.
4. Make and enforce orders, rules, and bylaws for the operation and maintenance of the southwest pipeline project.

SECTION 11. State water commission to fix water rates for the southwest pipeline project. The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the southwest pipeline project. The payments for water service include each water user entity's proportionate share of the operation, maintenance and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the southwest pipeline project reserve fund for replacement, as established by section 16 of this Act, for replacement and extraordinary maintenance of southwest pipeline project works. The amount of such reserve fund for replacement shall be determined by the commission.

SECTION 12. Operation and maintenance - Commission to employ manager and employees. The commission shall obtain the assistance necessary for the operation and maintenance of the southwest pipeline project. To that end, it may appoint a manager, and may appoint subordinate officers and employees. It may designate the manager its general agent in respect to the operation and maintenance of the southwest pipeline project, but subject, nevertheless, in such agency, to the supervision, limitation, and control of the commission. It may appoint or employ such contractors, engineers, attorneys, and other experts, agents, and servants as in the judgment of the commission the interests of the state may require, and shall define the duties, designate the titles, and fix the compensation, within legislative appropriation, and the bonds of all such persons so engaged. Subject to the control and regulation of the commission the manager of the southwest pipeline project may appoint and employ such deputies and other subordinates, and such contractors, engineers, attorneys, and other experts, agents, and servants as he shall deem required. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the southwest pipeline project, shall remain within the

appropriation and earnings lawfully available in each year for such purpose.

SECTION 13. Removal and discharge of appointees. The commission may remove and discharge any and all persons appointed in the exercise of powers granted by this Act, whether by the commission or by the manager of the southwest pipeline project. Any such removal may be made whenever in the judgment of the commission, the public interests and the interests of the southwest pipeline project require it. All appointments and removals contemplated by this chapter shall be made as the commission shall deem most fit to promote the purpose and efficiency of the southwest pipeline project.

SECTION 14. Operation and maintenance fund. To identify and distinguish the revenues received from water user entities for operation and maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project operation and maintenance fund. All moneys received by the state treasurer, whether from payments made by water user entities for operation and maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of operation and maintenance of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by him only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in said fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

SECTION 15. Revenues for operation and maintenance - Deposit - Use. Money derived and received from water user entities for operation and maintenance of the southwest pipeline project shall be deposited by the commission in the operation and maintenance fund, and shall be used for no purposes other than to pay for costs and expenditures for operation and maintenance of the southwest pipeline project.

SECTION 16. Reserve fund for replacement. To identify and distinguish the revenues received from water user entities for replacement and extraordinary maintenance of the southwest pipeline project, there shall be maintained, as a part of the moneys of the state received and kept by the state treasurer, a fund to be designated as the southwest pipeline project reserve fund for replacement. All moneys received by the state treasurer, whether from payments made by water user entities for replacement and extraordinary maintenance of the southwest pipeline project or otherwise, which shall be by law or by other authoritative designation made applicable to replacement of the southwest pipeline project, shall be kept by the state treasurer in such fund distinct from all other moneys and shall be disbursed by him only for the particular purpose or purposes for which the moneys were received, and no other appropriations shall ever be made of the moneys in the

fund. This section shall not be construed as preventing the state treasurer from depositing the moneys in the Bank of North Dakota.

SECTION 17. Revenues for replacement - Deposit - Use. Money derived and received from water user entities for replacement and extraordinary maintenance of the southwest pipeline project shall be deposited by the commission in the reserve fund for replacement, and shall be used for no purposes other than to pay for replacement or extraordinary maintenance of works which are part of or associated with the southwest pipeline project.

SECTION 18. Water rates for capital costs - Deposit. Money derived and received from water user entities for capital costs of the southwest pipeline project shall be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and shall be expended only pursuant to legislative appropriation for the purposes specified in subsection 2 of section 57-51.1-07.

SECTION 19. Validation of water service contracts. Water service contracts entered into by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are hereby deemed confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding shall comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts.

SECTION 20. Other pipelines - Commission approval required. Upon construction of the southwest pipeline project, utilities, corporations, companies, or any other person or entity which proposes to install or construct a pipeline or other underground conveyance system which crosses or intersects the southwest pipeline project may do so only with the approval of the state water commission, in accordance with the requirements and conditions imposed by the commission for the pipeline or other crossing.

SECTION 21. APPROPRIATION. All of the moneys obtained as payments for water service from the southwest pipeline project for operation, maintenance, and replacement, as provided for in this Act and as provided in any water service contracts and amendments thereto between the state water commission and water user entities, and all moneys deposited with the state treasurer by the commission as specified in sections 15 and 17 of this Act, and all moneys constituting the southwest pipeline project operation and maintenance fund or the southwest pipeline project reserve fund for replacement, or so much thereof, as from time to time be necessary, are hereby appropriated to pay for the costs and expenditures of the operation, maintenance, and replacement of the southwest pipeline project. This appropriation shall not be repealed and no provisions in this Act or any other Act shall affect the authority and ability of the commission to operate, maintain, and replace the southwest pipeline project, or provide for the operation, maintenance, and replacement of the southwest pipeline project, as provided herein.

Approved April 8, 1983

CHAPTER 686

SENATE BILL NO. 2342
(Nething, Nelson)

SOUTHWEST PIPELINE WATER DEVELOPMENT BONDS

AN ACT to provide for the issuance, sale, and delivery of water development bonds, southwest pipeline series; to create a sinking fund and other funds; to provide for the servicing and retirement of the bonds; to provide a continuing appropriation for the payment of the bonds; and to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the allocation of oil extraction tax revenues.

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

SECTION 1. Designation of bonds - Definition. Bonds to be issued under the provisions of this chapter shall be known as state of North Dakota water development bonds, southwest pipeline series. As used in this Act, "commission" means the industrial commission.

SECTION 2. Legislative finding and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It further finds that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized by the legislative assembly, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including but not limited to domestic, rural, and municipal uses.

SECTION 3. Authority to issue bonds. The industrial commission is hereby authorized to prepare, handle, issue, sell, and deliver one or more series of bonds in an amount not to exceed, in the aggregate, one hundred sixty million dollars for the purpose of

procuring necessary funds to be transferred by the industrial commission to the state water commission for the construction, operation, and maintenance of the southwest pipeline project. The principal of and the interest on the bonds is payable solely from the funds set aside for such payment as provided in this Act.

SECTION 4. Bonds to be limited obligation bonds. Obligations issued under the provisions of this Act do not constitute a debt, liability or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but shall be payable solely from the revenues, appropriations, or other sources provided for by this Act. Under no circumstances shall general fund revenues of the state of North Dakota be used to pay all or part of the bonds issued hereunder, and there is no moral obligation of the state of North Dakota to pay all or part of the bonds issued hereunder. Bonds issued under this Act shall contain on their face a statement to the effect that the state of North Dakota shall not be obligated to pay the same nor the interest thereon and payments shall be made solely from the revenues, appropriations, or other sources of payment, as provided for herein and pledged therefor, and that the faith and credit of the state of North Dakota is not pledged to the payment of the principal or the interest on the bonds.

SECTION 5. Sale of bonds. The commission is authorized to issue bonds or evidence of indebtedness which shall be sold at not less than ninety-five percent of par plus any accrued interest. The bonds may be sold at public or private sale, shall mature not more than forty years from their date or dates, and may contain such terms and provisions as the commission shall determine. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds, including, without limitation, any reserves for the payment of the bonds and any capitalized interest during the period of construction and for a period of one year thereafter.

SECTION 6. Bond funds. A sinking fund for the payment of bonds issued under this Act and interest thereon shall be established and maintained in the office of the state treasurer or by a designated trustee. The state treasurer or the designated trustee shall be the custodian of the sinking fund and shall at all times maintain adequate records on the condition of the sinking fund. The state treasurer or the designated trustee shall make reports of the condition of the sinking fund to the commission on request. All sums appropriated for the payment of bonds issued under this Act shall be deposited in the sinking fund therefor and shall be disbursed by the state treasurer or the designated trustee in payment of the bonds and interest thereon directly or through a paying agent to be designated by the commission. The commission may create and establish one or more special accounts within the fund, including, but not limited to, a reserve account and a reserve account for replacement. The commission shall pay into such accounts any moneys appropriated and made available by the state for the purpose of such accounts; any proceeds of the sale of bonds, to

the extent provided in the resolution of the commission authorizing the issuance thereof; and any other moneys which may be made available to the commission for the purpose of such accounts from any other source or sources, including revenues for the delivery of water through the southwest pipeline project.

SECTION 7. Bonds tax exempt. All bonds issued under the provisions of this Act and interest thereon shall be exempt from all state, county, and municipal taxes.

SECTION 8. Limitation of action. No action shall be brought or maintained in any court in this state questioning the validity of any bonds issued under this Act, or of any tax levied under this Act, unless such action is commenced within thirty days after the adoption of the resolution of the commission authorizing the sale of the bonds. The commission may commence a special proceeding any time after this Act is effective, in and by which the constitutionality and validity of the bonds to be issued pursuant to this Act shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceedings shall comply as nearly as possible with the procedure required for declaratory judgment proceedings.

SECTION 9. Appropriation. All moneys in the oil extraction tax development fund which are allocated as provided in subsection 2 of section 57-51.1-07 are hereby appropriated to the sinking fund for the payment of interest and principal of all bonds issued and sold under this Act. The state water commission may use all or part of the moneys allocated as provided in subsection 2 of section 57-51.1-07 to match any federal funds available for such purposes.

SECTION 10. Appropriations irrevocable. All taxes levied, appropriations, and transfers provided to pay bonds issued under the provisions of this Act and interest thereon shall not be repealed until such bonds and interest are fully paid. The state pledges and agrees with the holders of any obligations issued pursuant to this Act that the state will not limit or alter the authorities vested in the commission to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

* SECTION 11. AMENDMENT. Section 57-51.1-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund. Moneys deposited in the oil extraction tax development fund shall be apportioned quarterly by the state treasurer as follows:

* NOTE: Section 57-51.1-07 was also amended by section 1 of House Bill No. 1724, chapter 663.

1. Sixty percent shall be allocated to the state school aid program for use in accordance with the provisions of chapter 15-40-1. It is the intent of the electors and the legislative assembly that the allocation made by this subsection shall not exceed seventy percent of the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40-1. Should the allocation exceed seventy percent, the balance of the allocation above seventy percent shall be deposited in the general fund. Should the allocation not exceed seventy percent, it is the intent of the electors and the legislative assembly that other appropriations made by the legislative assembly for state aid to schools in accordance with chapter 15-40-1, when added to the amount allocated under this subsection, shall provide at least seventy percent of the funds required to meet the educational cost per pupil in public elementary and secondary education as determined under the provisions of chapter 15-40-1.
- 2- Ten percent shall be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, shall be credited to a special trust fund, to be known as the resources trust fund, to. The resources trust fund shall be established in the state treasury and the funds therein shall be deposited and invested as are other state funds to earn the maximum amount permitted by law which income shall be deposited in the resources trust fund. Provided, the first fifteen million dollars allocated and credited to the resources trust fund shall be appropriated by the legislative assembly for Grafton state school for the remodeling or reconstruction and equipping of existing buildings and other facilities, for the construction and equipping of new buildings and other facilities, and for providing additional staffing for that institution, as shall be provided by the legislative assembly. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and shall be available to:
 - a. The state water conservation commission for planning for and construction of comprehensive water supply facilities, including rural water systems; and
 - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste

products utilization; and for the making of grants and loans in connection therewith.

- 3- 2. ~~Thirty~~ Ninety percent shall be allocated and credited to the state's general fund for general state purposes.

Approved April 13, 1983

CHAPTER 687

HOUSE BILL NO. 1174
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Health)

WATER POLLUTION PERMIT FEES

AN ACT to create and enact section 61-28-06.1 of the North Dakota Century Code, relating to water pollution permit fees.

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

SECTION 1. Section 61-28-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-28-06.1. Fees - Deposit in operating fund. The department by rule may prescribe and provide for the payment and collection of reasonable fees for the issuance and renewals of permits, licenses, and approvals to discharge sewage, industrial wastes, or other wastes into state waters. The permit fees must be based on the anticipated cost of filing and processing the application, reviewing plans and specifications relating to the construction, modification, or operation of disposal systems, and taking action on the requested permit and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit. Any moneys collected for permit fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

Approved March 10, 1983

CHAPTER 688

SENATE BILL NO. 2133
(Committee on Appropriations)
(At the request of the Department of Health)

WATER SYSTEM APPROVAL

AN ACT to amend and reenact section 61-28.1-04 of the North Dakota Century Code, relating to approval of water systems.

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

SECTION 1. AMENDMENT. Section 61-28.1-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28.1-04. Approval of water systems.

1. No person shall construct, install, modify, use, or operate a public water system without prior approval from the department or in violation of the terms of, conditions imposed upon, or order of the department concerning such approval.
2. The department shall provide for the issuance, suspension, revocation, modification, and renewal of any approval required pursuant to this section.
3. Approval by the department shall not relieve any person of the responsibility to comply with any requirements of law or any rule or regulation.
4. The department may provide for the collection of reasonable fees for the approval required pursuant to this section. Such fees shall be deposited in the ~~general fund~~ department operating fund in the state treasury and shall be spent subject to appropriation by the legislative assembly.

Approved March 17, 1983