

WATERS

CHAPTER 665

HOUSE BILL NO. 1639
(Representatives Strinden, Mertens)
(Senators Nething, Heigaard)

WETLANDS IMPORTANCE

AN ACT to provide a statement of legislative intent relating to wetlands; to provide for a conditional property tax exemption for wetlands, for payment to counties by the state of the amount of tax exempted, and an authorization for receipt of funds; to amend and reenact sections 61-16.1-41, 61-31-01, and 61-31-10 of the North Dakota Century Code, relating to drainage permits, declaration of legislative intent concerning wetlands, and receipt of funds for the waterbank program; to provide a standing and continuing appropriation; and to provide an effective date.

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

SECTION 1. Declaration of intent. The legislative assembly recognizes the importance of wetlands in North Dakota as a natural resource of state, national, and international significance. The legislative assembly also recognizes the importance of agriculture and water development in North Dakota, and that each of these activities has an interrelationship and an impact on wetlands. Therefore, the legislative assembly declares that a long-term, comprehensive policy is needed concerning North Dakota's wetlands.

The legislative assembly recognizes that between two and three million acres of wetlands remain in North Dakota, and that North Dakota produces from two and one-half million to six million ducks each year, depending on the wet and dry cycle. The legislative assembly further recognizes that wetlands can moderate the extremes in water flow and have value as natural flood-control mechanisms. The legislative assembly recognizes that wetlands can aid in water purification by trapping, filtering, and storing sediment and pollutants and by recycling nutrients. The legislative assembly recognizes that some wetlands may serve as ground water recharge areas. The legislative assembly recognizes that wetlands function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species.

The legislative assembly also finds that the thirty-two million acres of North Dakota's prairie pothole region north and east of the Missouri River is intensively farmed, and that agriculture is the largest and most important industry in North Dakota. The legislative assembly recognizes that many wetlands, if drained, could be used as prime cropland for the production of food and fiber.

The legislative assembly further finds that the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, general welfare, and economic security of North Dakota and its citizens.

The legislative assembly also finds that the United States fish and wildlife service holds easements to prevent the draining, burning, or filling of wetlands covering four million eight hundred thousand acres of land in North Dakota, within which farmers have been paid to preserve seven hundred sixty thousand acres of wetlands; that the United States has easements for an additional sixty-six thousand acres in North Dakota which are a part of national wildlife refuges; and that the United States also owns in fee an additional four hundred thirty thousand acres of land in North Dakota for wetland and waterfowl habitat preservation. The legislative assembly finds that payments in lieu of taxes to counties in which the United States fish and wildlife service owns land in fee seldom make up for the loss in the payments caused by removing these lands from the tax base.

The legislative assembly finds that information upon which to make decisions concerning wetlands is lacking. The legislative assembly finds that a long-term plan must be developed concerning the number of wetlands which exist in North Dakota, the number of wetlands under federal or state government ownership, the location of North Dakota's remaining wetlands, the number of wetlands which should be preserved in public or private ownership in North Dakota, the manner in which wetlands should be preserved if it is determined that additional wetlands need to be preserved, the number of waterfowl that North Dakota produces each year, the agricultural benefits that are foreclosed if wetlands are not drained, the cost to farmers of not draining their wetlands, the tax loss to counties resulting from federal fee ownership of wetlands, the impact of wetlands on water resource development in North Dakota, and other related issues.

It is hereby declared to be the policy of this state that a long-term policy and plan must be developed for wetlands and waterfowl production in North Dakota. The legislative assembly further declares that if study reveals that additional wetlands in North Dakota should be preserved and that enhanced management and development of wetland and waterfowl habitat in North Dakota are desirable, that the legislative assembly should mandate preservation, management, and development of wetland and waterfowl habitat, and develop additional programs to preserve and develop wetland habitat, and provide adequate funding of such programs.

SECTION 2. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section shall be exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage, and that the landowner has filed the required agreement. The amount of the wetlands exemption shall be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the game and fish commissioner, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated shall be computed, and the property owner shall pay the difference between such amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, shall not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

SECTION 3. Wetlands tax exemption payment - Certification. Prior to March first of each year beginning in 1988, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 2 of this Act within the county and other information as may be

prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 2 of this Act in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June 30, 1988, and each year thereafter, the sum of property taxes due on property exempt under section 2 of this Act for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

SECTION 4. Authorization for receipt of funds. The state treasurer shall be authorized to receive funds for this program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11 and all income and moneys derived from the investment of such funds must be credited to the fund for this program. The state game and fish commissioner, the commissioner of agriculture, and the state engineer shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 2 and 3 of this Act.

SECTION 5. AMENDMENT. Section 61-16.1-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-41. Permit to drain waters required - Penalty. Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shows

that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board shall not issue a permit until flowage easements are obtained. Such flowage easements shall be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. The provisions of this section shall not be construed to apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

SECTION 6. AMENDMENT. Section 61-31-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-01. ~~Declaration of intent--~~ Rulemaking authority. The legislative assembly finds that it is in the public interest to preserve certain wetlands of the state and thereby to conserve surface waters, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture and replenishment of aquifers, to enhance habitat for resident wildlife, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the The commissioner of agriculture is authorized to adopt rules, pursuant to chapter 28-32, to implement this chapter, including rules setting out the procedures and payment rates designed to effectuate the terms of this chapter and the allocation of funds to those areas deemed most appropriate by the commissioner. This program is intended to supplement and complement the federal waterbank program and the payment rates established shall be at least comparable to federal rates.

SECTION 7. AMENDMENT. Section 61-31-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner shall be authorized to receive funds, ~~not exceeding one million dollars in aggregate total,~~ for this program from any private or public source, and shall also be authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the

governor, game and fish commissioner, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement this chapter. All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing this chapter upon approval of the emergency commission.

SECTION 8. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 1986, and section 5 of this Act becomes effective on July 1, 1987.

Approved March 27, 1985

CHAPTER 666

SENATE BILL NO. 2499
(Senators Kilander, Tallackson)
(Representative Kloubec)

RED RIVER CAPACITY INCREASE

AN ACT to provide for investigation of benefits of increasing the capacity of the lower Red River.

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

SECTION 1. Increasing the capacity of the lower Red River. The state water commission and the state engineer are hereby authorized to investigate the potential flood control benefits that would accrue to North Dakota landowners through increasing the channel capacity of the lower Red River through modification, alteration, maintenance, or construction in the channel area of the Red River of the North from Grand Forks to the Canadian border. The state water commission is hereby authorized to consult and negotiate with the state of Minnesota in addressing mutually beneficial activities that would facilitate the movement of spring flood flows in the Red River from the United States. The state water commission is hereby authorized to prepare plans for submission to the Fiftieth Legislative Assembly that would address projects to improve the carrying capacity of the lower Red River.

Approved March 28, 1985

CHAPTER 667

SENATE BILL NO. 2228
(Committee on Natural Resources)
(At the request of the Water Commission)

STATE ENGINEER TESTIMONY FEES

AN ACT to create and enact a new subsection to section 61-03-05 of the North Dakota Century Code, relating to the fees of the state engineer.

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

SECTION 1. A new subsection to section 61-03-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For testifying personally in civil litigation involving private parties, or through the engineer's employees, in response to a subpoena in a case which the engineer is not a party, the actual cost incurred, including mileage and travel expenses reimbursement, equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

Approved March 31, 1985

CHAPTER 668

HOUSE BILL NO. 1635
(Schmidt)

EXPLORATION WELLS NOT WATER WELLS

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, to prohibit the use of exploration wells as water wells; and to provide a penalty.

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

* SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prohibition on converting mineral wells to water wells. In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well. Any person who converts an exploration or production well to a water well shall be guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.

Approved March 29, 1985

* NOTE: This section has been codified as a new section to North Dakota Century Code chapter 61-01.

CHAPTER 669

SENATE BILL NO. 2194
(Committee on Natural Resources)
(At the request of the Water Commission)

UNSAFE WATERWORKS

AN ACT to create and enact two new sections to chapter 61-03 of the North Dakota Century Code, relating to inspection and removal of unsafe water works; and to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to the state engineer's authority over unsafe or unauthorized works.

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

SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Removal of unsafe or unauthorized works. If the state engineer pursuant to his authority under title 61 determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered 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, the modifications necessary for compliance, and shall state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal of the works and assess the cost thereof, or such portion as the state engineer 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 upon the matter. The state engineer shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove the works. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, 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 state engineer under the provisions of

this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal.

For purposes of this section the term "works" includes dams, dikes, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

SECTION 2. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection by state engineer. Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under title 61, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

SECTION 3. AMENDMENT. Section 61-16.1-38 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15,418.52 cubic meters] of water shall be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, shall be presented first to the state engineer. After receipt, the state engineer shall consider the application in such detail as he deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete his initial review of the application; and ~~if he approves it,~~ shall forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications

ef to the state engineer, and if the same shall meet. If the application meets with the board's approval, the board shall forward the approved application to the applicant, and shall send a certification of its action to the state engineer. The state engineer shall make the final decision on the application and forward his decision to the applicant and the local water resource board. Any person constructing a dam, dike, or other device, which is capable of retaining twelve and one-half acre-feet [15,418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, shall be liable for all damages proximately caused by such dam, dike, or other device, and shall be guilty of a class B misdemeanor.

Approved March 27, 1985

CHAPTER 670

SENATE BILL NO. 2266
(Senators Lodeon, Nething, Nelson)
(Representatives Hughes, Moore)

WATER RIGHTS AND FORFEITURE

AN ACT to amend and reenact sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code, relating to terms of permits for use of water and forfeiture of water rights.

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

SECTION 1. AMENDMENT. Section 61-04-06.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06.2. Terms of permit. The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application except that water permits for incorporated municipalities may contain water in excess of present needs if based upon reasonable projections of future water needs of the municipality. He may require modification of the plans and specifications for the appropriation. He may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest. Conditions and limitations so attached shall be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

SECTION 2. AMENDMENT. Section 61-04-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in his permit or ceases to use it for the beneficial use cited in his permit for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a

justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare such water permit or right forfeited; provided, however, that any such water permit or right held by a state agency, department, board, commission, or institution may be declared forfeited only by the North Dakota legislative assembly. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

*** SECTION 3. AMENDMENT.** Section 61-04-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it shall appear that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. Any holder of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by such appropriation or works to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.

* NOTE: Section 61-04-24 was also amended by section 1 of Senate Bill No. 2198, chapter 671.

5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 4. AMENDMENT. Section 61-04-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-25. Forfeiture of water rights - Hearing - Appeal. At such hearing the verified report of the state engineer or engineers of the state water commission shall be prima facie evidence for the forfeiture and cancellation of such water permit or portion thereof. If no one appears at the hearing, such water permit or portion thereof shall be declared forfeited and canceled. If interested parties shall appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that such water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, shall be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

Approved March 30, 1985

CHAPTER 671

SENATE BILL NO. 2198
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER RIGHTS FORFEITURE

AN ACT to amend and reenact section 61-04-24 of the North Dakota Century Code, relating to the forfeiture of water rights.

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

* SECTION 1. AMENDMENT. Section 61-04-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it shall appear that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. Any holder of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by such appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice shall be given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.

* NOTE: Section 61-04-24 was also amended by section 3 of Senate Bill No. 2266, chapter 670.

3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

Approved March 28, 1985

CHAPTER 672

SENATE BILL NO. 2252
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER PERMIT CANCELLATIONS

AN ACT to cancel and declare forfeited a portion of water permit numbers 153B and 2143 relating to the right of the Jamestown state hospital and the Hettinger experiment station to appropriate water; and to declare an emergency.

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

SECTION 1. Cancellation of a portion of water permit number 153B. The right of the Jamestown state hospital to appropriate 176 acre-feet of water from the James River for irrigation purposes under water permit number 153B is hereby cancelled and all rights thereunder are hereby forfeited.

SECTION 2. Cancellation of a portion of water permit number 2143. The right of the Hettinger experiment station to appropriate 139.6 acre-feet of water from an unnamed intermittent draw for irrigation purposes under water permit number 2143 is hereby cancelled and all rights thereunder are hereby forfeited.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 673

SENATE BILL NO. 2096
(Legislative Council)
(Interim Water Committee)

WATER RESOURCE DISTRICT MANAGERS' TERM OF OFFICE

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to the term of office of water resource board managers.

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

* SECTION 1. AMENDMENT. Section 61-16-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers. When a water resource district has been created, any resident landowner in the district, except a county commissioner, ~~shall be is~~ eligible, subject to the provisions of this section, for appointment to the water resource board ~~thereof~~. The terms of office of managers appointed to the first water resource board shall be determined by lot and ~~shall be~~ as herein provided. If ~~such the~~ water resource board ~~shall consist~~ consists of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board ~~shall consist~~ consists of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of

* NOTE: Section 61-16-08 was also amended by section 1 of House Bill No. 1502, chapter 674.

the managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and reoccurring flooding. ~~When~~ After June 30, 1985, when the term of office of a district manager has expired, ~~his~~ the manager's successor shall hold office for ~~five~~ three years from the first day of January next following the date of ~~his~~ the successor's appointment. The term of office of a manager ~~shall~~ does not terminate until ~~his~~ the successor in office is appointed and qualified. In case the office of any district manager ~~shall become~~ becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of the water resource board shall receive the sum of forty-five dollars per day while performing ~~his~~ duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing ~~such~~ the manager must be apprised of and allowed ample opportunity to repudiate ~~such~~ the evidence, that ~~such~~ the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved February 6, 1985

CHAPTER 674

HOUSE BILL NO. 1502
(Meyer)

WATER MANAGER COMPENSATION

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to compensation of water managers.

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

* SECTION 1. AMENDMENT. Section 61-16-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers. When a water resource district has been created, any resident landowner in the district, except a county commissioner, shall be eligible, subject to the provisions of this section, for appointment to the water resource board thereof. The terms of office of managers appointed to the first water resource board shall be determined by lot and shall be as herein provided. If such water resource board shall consist of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board shall consist of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of the managers appointed to a seven-member district board shall be from

* NOTE: Section 61-16-08 was also amended by section 1 of Senate Bill No. 2096, chapter 673.

flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and ~~reoccurring~~ recurring flooding. When the term of office of a district manager has expired, his successor shall hold office for five years from the first day of January next following the date of his appointment. The term of office of a manager shall not terminate until his successor in office is appointed and qualified. In case the office of any district manager shall become vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of ~~the~~ a water resource board shall receive the sum of at least forty-five dollars per day while performing his duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing such manager must be apprised of and allowed ample opportunity to repudiate such evidence, that such manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved March 14, 1985

CHAPTER 675

HOUSE BILL NO. 1235
(Representatives L. Hanson, Melby, W. Williams)
(Senator Wogsland)

ALTERNATE WATER RESOURCE BOARD MEMBERS

AN ACT to create and enact a new section to chapter 61-16 of the North Dakota Century Code, relating to the appointment of an alternate water resource board member upon disqualification of a water resource board member due to a conflict of interest or illness.

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

SECTION 1. A new section to chapter 61-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of alternate board member due to conflict of interest or illness. When a member of a water resource board has a conflict of interest in a specific issue before the board or is unable to fulfill the duties of a board member because of physical or mental illness, the county commissioners may appoint a person to serve as an alternate to the disqualified board member. If the disqualification is for a conflict of interest, the alternate board member is to serve only for the purpose of deciding the particular issue causing the conflict. If the disqualification is for physical or mental illness, the alternate board member is to be appointed by the county commissioners only for one meeting at a time.

Approved March 22, 1985

CHAPTER 676

SENATE BILL NO. 2136
(Committee on Natural Resources)
(At the request of the State Auditor)

WATER RESOURCE DISTRICT FISCAL YEAR

AN ACT to amend and reenact sections 61-16.1-06 and 61-16.1-25 of the North Dakota Century Code, relating to the fiscal year of water resource districts.

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

SECTION 1. AMENDMENT. Section 61-16.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district shall begin ~~July~~ January first and end ~~June thirtieth~~ December thirty-first. The water resource board shall estimate the expenses of the district before ~~July~~ October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan prepared and adopted pursuant to section 61-16.1-13. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and

maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

* SECTION 2. AMENDMENT. Section 61-16.1-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-25. Financial reports - Liability for deficiencies. On the first Monday of each month the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month and the amount and items of expenditure during that month. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of ~~June~~ January of each year the water resource board shall prepare a complete statement of the condition of the finances of the district for the past year and shall cause the same to be filed with the county auditor of each county in which the district lies on or before ~~July~~ February first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its ~~July~~ February meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the

* NOTE: Section 61-16.1-25 was also amended by section 2 of Senate Bill No. 2361, chapter 677.

county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

Approved March 30, 1985

CHAPTER 677

SENATE BILL NO. 2361
(Tweten)WATER RESOURCE DISTRICT FINANCIAL
REPORTS

AN ACT to amend and reenact sections 61-16.1-08 and 61-16.1-25 of the North Dakota Century Code, relating to financial reporting for water resource districts.

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

SECTION 1. AMENDMENT. Section 61-16.1-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds. The treasurer of each county in which a district, or a part of such a district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. The In June and December of each year, and as the county commission may otherwise require, the district treasurer shall on or before the twentieth day of each month report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or

agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

* SECTION 2. AMENDMENT. Section 61-16.1-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-25. Financial reports - Liability for deficiencies. On the first Monday of each month In June and December of each year and as otherwise required by the county commission appointing the managers of the district, the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month period and the amount and items of expenditure during that month period. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of June of each year the water resource board shall prepare a complete statement of the condition of the finances of the district and shall cause the same to be filed with the county auditor of each county in which the district lies on or before July first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its July meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances

* NOTE: Section 61-16.1-25 was also amended by section 2 of Senate Bill No. 2136, chapter 676.

made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

Approved March 30, 1985

CHAPTER 678

HOUSE BILL NO. 1501
(Meyer)

WATER RESOURCE BOARD DUTIES

AN ACT to amend and reenact section 61-16.1-10 of the North Dakota Century Code, relating to duties of the water resource board; and to repeal sections 61-16.1-03 and 61-16.1-13, relating to boundaries of water resource districts and master plans.

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

SECTION 1. AMENDMENT. Section 61-16.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-10. Responsibilities and duties of water resource board. Each water resource board shall have the following responsibilities and mandatory duties:

1. ~~To meet~~ Meet jointly with other water resource boards within a common river basin at least twice each year at ~~such~~ times and places as ~~may be~~ mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. ~~To cooperate~~ Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. ~~To enter into an agreement~~ Exercise jointly with all other water resource districts ~~of within~~ a river basin ~~to address collectively and attempt to effectively~~ resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. ~~To encourage~~ Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and ~~to~~ carry out to the maximum extent possible the water management policy that

upstream landowners ~~who~~ and ~~districts~~ that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.

5. ~~In the planning of any surface water project which will have an impact downstream in the district or another water resource district, to address~~ Address and consider fully ~~such impacts in the planning of any surface water project the downstream impacts caused by the project.~~ A determination of whether to proceed with the construction of ~~any such a~~ project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. ~~To require~~ Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

SECTION 2. REPEAL. Sections 61-16.1-03 and 61-16.1-13 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 14, 1985

CHAPTER 679

SENATE BILL NO. 2097
(Legislative Council)
(Interim Water Committee)

**PROPERTY SUBJECT TO WATER RESOURCE BOARD
MILL LEVIES**

AN ACT to amend and reenact subsection 2 of section 61-16.1-11 of the North Dakota Century Code, relating to joint water resource board mill levies.

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

SECTION 1. AMENDMENT. Subsection 2 of section 61-16.1-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution, ~~an ad valorem~~ a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.

Approved March 30, 1985

CHAPTER 680

SENATE BILL NO. 2202
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER RESOURCE BOARD ASSESSMENT APPEALS

AN ACT to amend and reenact section 61-16.1-23 of the North Dakota Century Code, relating to appeals from assessments of water resource boards.

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

SECTION 1. AMENDMENT. Section 61-16.1-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners, and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed project. Any landowner or political subdivision who or which claims that he or it will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit to the state engineer. The state engineer shall not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question shall be final.

Approved March 30, 1985

CHAPTER 681

SENATE BILL NO. 2316
(Tweten)

DRAIN MAINTENANCE ASSESSMENTS

AN ACT to amend and reenact sections 61-16.1-45 and 61-21-46 of the North Dakota Century Code, relating to assessments for drain maintenance.

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

SECTION 1. AMENDMENT. Section 61-16.1-45 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-45. Maintenance of drainage projects. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands benefited by the drain. The district may, at its own discretion, utilize either of the following methods for levying special assessments for such maintenance.

1. 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 per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
2. Agricultural lands shall be assessed uniformly throughout the entire assessed area. Nonagricultural property shall be assessed an amount not to exceed one dollar for each

five hundred dollars of taxable valuation of such nonagricultural property.

In case the maximum levy of one dollar per acre [.40 hectare] 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, a water resource board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for five two years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount which can be levied by the board in any two-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 prior to obligating the district for such costs.

SECTION 2. AMENDMENT. Section 61-21-46 of the 1983 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.

1. 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 such sum in any one year as the rationing of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands shall be assessed uniformly throughout the entire assessed area. Nonagricultural property shall be assessed an amount not to exceed one dollar for each five hundred dollars of taxable 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 30, 1985

CHAPTER 682

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

ARTESIAN WELLS

AN ACT to amend and reenact sections 61-20-01, 61-20-02, and 61-20-03 of the North Dakota Century Code, relating to artesian wells.

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

SECTION 1. AMENDMENT. Section 61-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-01. Valve or valves required on artesian well - Flow permitted from artesian wells - Preventing flow. Every person, stock company, association, or corporation owning or controlling the real estate upon which is located an artesian or flowing well shall provide for each such well a valve or valves capable of controlling the discharge from such well and shall keep such valve or valves so adjusted that only such supply of water shall escape as is necessary for ordinary use by the owner, or the person in control, of such land, in conducting his business. In the winter, such flow may be permitted as will prevent freezing of the well, and in those cases where it is necessary, a sufficient flow may be allowed to prevent clogging of for the purposes of developing the well. The owner of an artesian well shall be required, by means of the construction of a reservoir or otherwise, to prevent the flow of his well from running upon land belonging to another or from running into any ditch along any public highway except a regularly established drainage ditch.

SECTION 2. AMENDMENT. Section 61-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-02. Drilling artesian or flowing well - Requirements --Valve below frost level. Every person, stock company, association, or corporation which shall drill an artesian or flowing well, shall drill a small smooth hole through the cap-rock to fit the pipe closely, and shall use every possible means to seal around the main pipe in such a manner that no water can escape from the flow. No dynamite or other explosive shall be used in penetrating the water

covering layer of cap-rock. This does not apply to boulders of granite or other obstacles in non-water-bearing horizons. Where the top part of the water-bearing layers of any given flow are soft and crumbling, yielding muddy or sandy flow, the driller may not end the well at this level, but must test the layers by boring on down a reasonable distance, from five to twenty-five feet at least, and more, if the owner of the land requires, to locate a terminus in a firm sandrock which will stand firm, preventing dirty flow and permitting regulation of the flow. Once the firm stratum is located, the driller shall attach in it at the end of the well pipe a strainer of noncorrosive material, with numerous small perforations to insure clear pure water and nonclogging. If the owner requests, the driller must place a valve below frost level with a handle reaching to the surface so that the well may be entirely shut off at will. He shall extend the outside or surface casing to, and fit the same solidly into, the shale or hard clay formation a sufficient distance entirely to prevent a flow around the casing. He shall seal between casing and pipe comply with the rules of the state engineer regarding such activity.

SECTION 3. AMENDMENT. Section 61-20-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-03. Well clogged to be left open - Application of chapter-- Wild wells. In case of a new well in any soft formation where clay, sand, or any sediment is liable to cause clogging, the valve may be left open until the well has cleared sufficiently. It then shall be adjusted finally to normal conditions. The provisions of this chapter shall apply to a "wild" well, or a well out of control, except that if it is determined by the state engineer that such well cannot be repaired for use, no valve shall be attached, but every effort shall be made by the owner to seal, plug, or cut off the same, when in the estimation of the state geologist it will cause no less other than a reasonable amount of repair cost. Old wells which might be damaged by so doing need not be shut off, but such wells shall be put in repair at the earliest possible date and shall be regulated thereafter.

Approved March 27, 1985