

WATERS

CHAPTER 591

SENATE BILL NO. 2202
(Agriculture Committee)
(At the request of the State Engineer)

WATER PERMITS CANCELED

AN ACT to cancel and declare forfeited all or part of water permits numbered 24C, 939, 2432, 578, and 2708, relating to the right of the state industrial school, roughrider industries, North Dakota association of soil conservation districts, and North Dakota state university-Carrington research extension center to appropriate water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Cancellation of a portion of water permit number 24C. The right of the North Dakota industrial school to appropriate 41.4 acre-feet of water from the Heart River for irrigation purposes under water permit number 24C is canceled and all rights thereunder are forfeited.

SECTION 2. Cancellation of a portion of water permit number 939. The right of roughrider industries to appropriate 226.2 acre-feet of ground water for irrigation purposes under water permit number 939 is canceled and all rights thereunder are forfeited.

SECTION 3. Cancellation of water permit number 2432. The right of roughrider industries to appropriate 659.4 acre-feet of ground water for irrigation purposes under water permit number 2432 is canceled and all rights under the permit are forfeited.

SECTION 4. Cancellation of water permit number 578. The right of the North Dakota association of soil conservation districts to appropriate 241.2 acre-feet of ground water for irrigation purposes under water permit number 578 is canceled and all rights under the permit are forfeited.

SECTION 5. Cancellation of water permit number 2708. The right of the North Dakota state university-Carrington research extension center to appropriate 203.0 acre-feet of ground water for irrigation purposes under water permit number 2708 is canceled and all rights under the permit are forfeited.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 592

HOUSE BILL NO. 1145
(Natural Resources Committee)
(At the request of the State Water Commission)

WATER COMMISSION COMPENSATION OR EXPENSES

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-12 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 11, 1993
Filed March 11, 1993

CHAPTER 593

SENATE BILL NO. 2169
(Natural Resources Committee)
(At the request of the State Engineer)

APPEALS OF WATER DECISIONS

AN ACT to amend and reenact sections 61-02-76 and 61-03-22 of the North Dakota Century Code, relating to appeals of decisions of the water commission and state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-76 of the North Dakota Century Code is amended and reenacted as follows:

61-02-76. Hearing - Appeals from decision of commission. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the commission under the provisions of this title shall have the right to a hearing by the commission ~~and if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved shall have the right to petition for reconsideration and to appeal from the decision of the commission on such hearing,~~ all in accordance with the provisions of chapter 28-32.

SECTION 2. AMENDMENT. Section 61-03-22 of the North Dakota Century Code is amended and reenacted as follows:

61-03-22. Hearing - Appeals from decision of state engineer. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title shall have the right to a hearing by the state engineer ~~and if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved shall have the right to petition for reconsideration and to appeal from the decision of the state engineer on such hearing,~~ all in accordance with the provisions of chapter 28-32.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 594

HOUSE BILL NO. 1142
(Natural Resources Committee)
(At the request of the State Water Commission)

DREDGED AND FILL MATERIAL DISPOSAL

AN ACT to regulate the disposal of dredged and fill material in certain waters of the state of North Dakota; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. The state engineer shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

SECTION 2. Powers. The state engineer has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants may not be expended for other than the purposes for which provided.
4. To enter upon or through permittee's premises where dredged or fill material is discharged, after written notice to the permittee. Such power may be exercised by authorized agents, representatives, and employees of the state engineer.
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of the chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.

10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

SECTION 3. Permits - Certification from state department of health and consolidated laboratories required. The state engineer may not issue a permit under this Act without a certification from the state department of health and consolidated laboratories that the permitted activity will not adversely affect water quality.

SECTION 4. Specification of disposal sites. The state engineer shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the state engineer. The rules must be consistent with federal law. The state engineer may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site whenever the state engineer determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

SECTION 5. Discharge of dredged or fill material - Permit required - Exceptions.

1. Except as otherwise provided by this Act, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the state engineer. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:
 - a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 6 of this Act;
 - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;
 - d. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
 - e. Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the state;
 - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters of the state are not

impaired, that the reach of the waters of the state is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or

- g. The placement of fill material associated with activities which the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity whose purpose is to convert an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

SECTION 6. General permits.

1. In carrying out the functions relating to the discharge or dredged or fill material, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards which apply to any activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the state engineer which are consistent with federal law.
2. A general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.
3. The state engineer may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

SECTION 7. Emergency permits. The state engineer may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

SECTION 8. Permit application - Notice - Hearing. Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the state engineer. The application must be on a form prescribed by the state engineer and must include information required by the state engineer. The state engineer may issue a permit after notice and opportunity for public

hearing. Within fifteen days of receipt all the information required to complete an application for a permit, the state engineer shall publish the notice.

SECTION 9. Proceedings.

1. Any proceeding to determine compliance or violation of the provisions of this chapter, or any rule, order, or condition in a permit issued pursuant to this chapter by the state engineer must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the state engineer if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

SECTION 10. Penalties. The state engineer may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The state engineer may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The state engineer may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such violation.
3. The state engineer may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

SECTION 11. Restoration. In lieu of or in addition to the penalties authorized under section 10 of this Act, the state engineer may require restoration of areas in which dredged or fill material has been illegally discharged. If the state engineer determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the state engineer shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the state engineer within thirty days of receipt of the notice. If the area is not restored as required, the state engineer shall cause the restoration of the area and assess the cost of the restoration against the person or persons responsible for the illegal discharge.

SECTION 12. EFFECTIVE DATE. This Act becomes effective on the date the state engineer certifies to the governor and the secretary of state that the state has received approval from the United States environmental protection agency to assume the program under section 404 of the Clean Water Act and that adequate funds have been made available from the federal government or other sources to fund the program

established pursuant to this Act, as determined by the state engineer and approved by the emergency commission. The secretary of state shall forward a copy of the state engineer's certification to the legislative council, with a notation indicating the effective date of this Act.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 595

HOUSE BILL NO. 1144
(Natural Resources Committee)
(At the request of the State Engineer)

STATE ENGINEER COPY FEES

AN ACT to amend and reenact subsections 5, 6, and 7 of section 61-03-05 of the North Dakota Century Code, relating to fees for computer discs, copies of documents, and for the transmission of documents electronically; and to repeal section 61-03-11 of the North Dakota Century Code, relating to furnishing copies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, and 7 of section 61-03-05 of the North Dakota Century Code are amended and reenacted as follows:

5. ~~For making a copy of any document recorded or filed in his office, twenty five cents for each hundred words or fraction thereof providing computer discs or copies of documents, including copies of blueprints of maps or drawings, government land office plats, benchmark books, survey notes, and water laws, a reasonable fee to be determined by the state engineer.~~
6. ~~For a blueprint copy of any map or drawing, twenty cents per square foot [929.03 square centimeters] or fraction thereof. For other copies of drawings, the actual cost of the work transmitting documents electronically, a reasonable fee to be determined by the state engineer.~~
7. For certifying ~~to such~~ copies, two dollars for each certificate.

SECTION 2. REPEAL. Section 61-03-11 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 596

HOUSE BILL NO. 1053
(Legislative Council)
(Interim Natural Resources Committee)

WATER PERMIT APPLICATIONS

AN ACT to amend and reenact sections 61-04-05 and 61-04-06 of the North Dakota Century Code, relating to water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof. When an application is filed which complies with this chapter and the rules adopted under this chapter, the state engineer shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:
 - a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.
 - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.
 - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The state engineer shall provide a list of all persons who must be notified under this subsection to the applicant.

3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities in the county in which the proposed water appropriation site is located. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.
4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in ~~a newspaper of general circulation in the area of~~ the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the time and place of a hearing on the application by the state engineer. The applicant shall pay all costs of the publication of notice.

SECTION 2. AMENDMENT. Section 61-04-06 of the North Dakota Century Code is amended and reenacted 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. If two or more municipal or public use water facilities request a local hearing, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located. The request must be in writing and must be made within fifteen days of when the notice of application is mailed by the applicant pursuant to section 61-04-05. The state engineer shall issue a permit if ~~he~~ the state engineer 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~~ must 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 nine copies of the transcript ~~shall~~ must be paid by the applicant.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 597

HOUSE BILL NO. 1143
(Natural Resources Committee)
(At the request of the State Engineer)

STATE WATER RIGHT FORFEITURE

AN ACT to amend and reenact section 61-04-23 of the North Dakota Century Code, relating to forfeiture of water rights by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-23 of the North Dakota Century Code is amended and reenacted 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 the permit or ceases to use it for the beneficial use cited in his the 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.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 598

HOUSE BILL NO. 1147
(Natural Resources Committee)
(At the request of the Atmospheric Resource Board)

CLIMATIC CHANGE MONITORING

AN ACT to create and enact a new subsection to section 61-04.1-08 of the North Dakota Century Code, relating to the powers and duties of the atmospheric resource board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-04.1-08 of the North Dakota Century Code is created and enacted as follows:

The board shall monitor the current state of knowledge regarding the magnitude and impacts of possible regional and global climatic changes, and shall provide such information to other state agencies that may benefit from such knowledge.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 599

SENATE BILL NO. 2305
(Senators Robinson, Bowman, Langley, Urlacher)
(Representatives Nichols, Rennerfeldt)

WEATHER MODIFICATION AUTHORITIES

AN ACT to create and enact a new section to chapter 61-04.1 and a new subsection to section 61-16.1-09 of the North Dakota Century Code, relating to the creation of temporary weather modification authorities and to powers of water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-04.1 of the North Dakota Century Code is created and enacted as follows:

Temporary weather modification authority. The board of county commissioners of any county that has no weather modification authority may create a temporary weather modification authority by setting a time and place for a public hearing, publishing at least ten days before the hearing notice of the hearing in the official newspaper of the county, and after the public hearing, approving establishment of the authority by majority vote. Upon approval, the board of county commissioners shall designate a water resource district to serve as the temporary weather modification authority. The designated district has all the powers granted to a weather modification authority under sections 61-04.1-23 through 61-04.1-32.

A temporary weather modification authority created under this section may conduct weather modification operations within the county for up to four years from the date of the creation of the temporary authority. To continue operating beyond the four-year period, the temporary authority must be made permanent in accordance with sections 61-04.1-23 through 61-04.1-32.

SECTION 2. A new subsection to section 61-16.1-09 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 600

HOUSE BILL NO. 1146
(Political Subdivisions Committee)
(At the request of the State Engineer)

IRRIGATION DISTRICT ELECTION FILING

AN ACT to amend and reenact section 61-06-12 of the North Dakota Century Code, relating to filing names for irrigation district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-06-12 of the North Dakota Century Code is amended and reenacted as follows:

61-06-12. Candidates at election - Filing names. Any person desiring to be a candidate at an irrigation district election shall file ~~his~~ that person's name with the secretary of the board not less than ~~ten~~ twenty days before ~~such~~ the election. The secretary shall contact each candidate for the purpose of verifying ~~his~~ the candidate's willingness to be a candidate at ~~such~~ the election.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 601

HOUSE BILL NO. 1379
(Representatives Sitz, Wanzek, Dobrinski, Kempenich)
(Senators Urlacher, O'Connell)

FLOOD IRRIGATION BOARDS

AN ACT to amend and reenact section 61-12-02 of the North Dakota Century Code, relating to qualifications of members and appointment of flood irrigation boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-12-02 of the North Dakota Century Code is amended and reenacted as follows:

61-12-02. Board of flood irrigation - How appointed - Filling vacancies - Office. The board of county commissioners of any organized county in this state, at any meeting of the board, by a majority vote of all the members, upon its own motion or on the petition of any person or persons interested, may appoint five ~~freeholders of the county property owners whose property lies within a flood irrigation project~~ as a board of flood irrigation of ~~such the~~ county. If the board of county commissioners appoints a board of flood irrigation it must appoint a board for each flood irrigation project in the county. One member of ~~such the~~ board shall must be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Subsequent appointments shall must be made for terms of five years. All persons so appointed shall hold office until their successors are appointed and qualified. In case of a vacancy the board of county commissioners may fill the ~~same~~ vacancy for the unexpired term by appointment. The board of county commissioners shall provide an office for ~~said the~~ board of flood irrigation at the county seat, suitable for its use and the keeping of its records and shall provide suitable record books for its use.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 602

HOUSE BILL NO. 1148
(Political Subdivisions Committee)
(At the request of the State Water Commission)

WATER RESOURCE DISTRICT CONSOLIDATION

AN ACT to create and enact a new section to chapter 61-16 of the North Dakota Century Code, relating to consolidation of water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Consolidation of water resource districts.

1. Any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the state engineer, by filing with the water commission a petition signed by:
 - a. A majority of the members of the board of each of the districts; or
 - b. Fifty percent or more of the landowners within each of the districts.

When the petition is filed by the district boards, it must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition. The petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No petition may be approved by the water commission unless it fully meets the requirements of this section.

2. The water commission shall fix a time and place for a public hearing at a site convenient and accessible for a majority of the affected individuals. At least fifteen days prior to the date of hearing, the commission shall publish notice of the hearing in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of the hearing may be given in a manner prescribed by the water commission.
3. Prior to the hearing, the state engineer shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of the findings to the water

commission. This report must be presented at the petition hearing. If the water commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, it shall deny the petition and state the reasons for denial. If, however, the water commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it shall grant the petition and create the district. Upon creation of the new water resource district, the water commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 603

HOUSE BILL NO. 1314
(Representatives Aarsvold, Brown, Gerntholz, Ring)
(Senators Marks, Urlacher)

ABANDONED WATER WELL PLUGGING

AN ACT to create and enact a new subsection to section 61-16.1-09 of the North Dakota Century Code, relating to powers of water resource boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-16.1-09 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 604

SENATE BILL NO. 2380
(Senator Naaden)

WATER RESOURCE DISTRICT PROJECT BIDS

AN ACT to amend and reenact section 61-16.1-14 of the North Dakota Century Code, relating to contracts for construction or maintenance of water resource district projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-14. Contracts for construction or maintenance of project. If the cost of construction or maintenance of a project does not exceed ~~fifteen~~ twenty-five thousand dollars, ~~such~~ the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of ~~such~~ the construction or maintenance exceeds ~~fifteen~~ twenty-five thousand dollars, the lowest and best bid ~~shall~~ must be accepted. The water resource board shall give at least ten days' notice of the time and place where the contract will be let. The notice ~~shall~~ must be published at least once in a newspaper of general circulation in the district in which the work is to be carried on and ~~shall~~ must be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board, conditioned upon the proper performance of the contract within the time specified by ~~such~~ the contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section ~~shall~~ may be waived, upon the determination of the water resource board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 605

SENATE BILL NO. 2203
(Agriculture Committee)
(At the request of the State Engineer)

ARTESIAN WELL ADMINISTRATION

AN ACT to amend and reenact sections 61-20-06 and 61-20-07 of the North Dakota Century Code, relating to duties of the state engineer with regard to artesian wells.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-20-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 2. AMENDMENT. Section 61-20-07 of the North Dakota Century Code is amended and reenacted as follows:

61-20-07. Enforcement of chapter by state ~~water commission~~ engineer - Appeal. The provisions of this chapter shall be enforced by the state water commission engineer. The state engineer may issue administrative orders requiring compliance with this chapter. An appeal from the commission's engineer's ruling may be taken under the provisions of chapter 28-32.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 606

SENATE BILL NO. 2489
(Senators Nalewaja, Sand, Tallackson)
(Representatives Jacobs, Kempenich, Kerzman)

DRAIN PROJECT BIDS

AN ACT to amend and reenact section 61-21-45 of the North Dakota Century Code, relating to bid requirements for certain water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-21-45 of the North Dakota Century Code is amended and reenacted as follows:

61-21-45. Contracts for work of cleaning and repairing drains. If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed ~~five~~ twenty-five thousand dollars in any one year, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds ~~five~~ twenty-five thousand dollars in any one year, a contract shall be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district. The competitive bid requirement of this section shall be waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 607

HOUSE BILL NO. 1263
(Representatives Jacobs, DeWitz)
(Senator Urlacher)

WATER AUTHORITY DIRECTORS

AN ACT to amend and reenact section 61-24.5-06 of the North Dakota Century Code, relating to election of county directors of the southwest water authority; and to repeal section 57-15-26.7 and chapter 61-24.2 of the North Dakota Century Code, relating to the west river water supply district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-24.5-06. Election of county directors of the southwest water authority. Any person who is a resident and qualified elector of the county, who aspires to the office of director of the southwest water authority, shall, not more than seventy ~~nor less than sixty days or less than fifty-five days~~ and before four p.m. of the ~~fifty-fifth~~ sixtieth day prior to before any primary election preceding a general election at which a director of the authority is to be elected, present to the county auditor a petition giving ~~his~~ that person's name, post-office address, and the title of the office of the southwest water authority to which ~~he~~ that person is seeking election. The petition must contain the signatures of not less than ~~fifty~~ two percent of the qualified electors of the county as determined by the number of votes cast in the county for the office of director of the southwest water authority at the most recent preceding election at which the office of director of the southwest water authority was voted upon. Each signer of ~~such~~ the petition shall include with ~~his~~ that signer's name ~~his~~ that signer's mailing address.

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

STATE OF NORTH DAKOTA)
COUNTY OF) ss.

I _____, being duly sworn, depose and say that I reside in the (county) of _____ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected 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 candidate receiving the highest number of votes shall be is elected.

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

SECTION 2. REPEAL. Section 57-15-26.7 and chapter 61-24.2 of the North Dakota Century Code are repealed.

Approved March 22, 1993

Filed March 23, 1993

CHAPTER 608

SENATE BILL NO. 2329
(Senators Urlacher, Tennefos, Keller)
(Representatives Jacobs, A. Olson, Wald)

SOUTHWEST WATER AUTHORITY LEVIES

AN ACT to amend and reenact section 61-24.5-10 of the North Dakota Century Code, relating to the levying of taxes by the southwest water authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **61-24.5-10. District budget - Tax levy.** Beginning in ~~1992~~ 1991, and each year thereafter, through December 31, ~~1997~~ 1996, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. The power to levy a tax does not extend beyond December 31, ~~1997~~ 1996. All moneys collected pursuant to ~~such~~ the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-12.1-11.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 10, 1993
Filed March 11, 1993

¹ NOTE: Section 61-24.5-10 was also amended by section 21 of House Bill No. 1045, chapter 45.

CHAPTER 609

HOUSE BILL NO. 1110
(Agriculture Committee)
(At the request of the Commissioner of Agriculture)

WATERBANK PROGRAM

AN ACT to amend and reenact sections 61-31-01, 61-31-02, 61-31-03, 61-31-04, 61-31-05, and 61-31-07 of the North Dakota Century Code, relating to the state waterbank program; and to repeal section 61-31-09 of the North Dakota Century Code, relating to notification of denied drainage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-31-01 of the North Dakota Century Code is amended and reenacted as follows:

61-31-01. Rulemaking authority. 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 2. AMENDMENT. Section 61-31-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjacent lands" means lands bordering or within one-fourth mile of the wetland.
2. "Commissioner" means the commissioner of agriculture.
3. "Landowner" means the person, including a lessee, who has actual use and exclusive possession of the land.
4. "Participant" means the landowner participating in the program.
5. "Program" means the state waterbank program.
6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.
- 2- 7. "Wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the director of the game and fish department, in accordance with United States fish and wildlife service circular No. 39 (1971 edition) a natural depressional area that is

capable of holding shallow, temporary, intermittent, or permanent water.
It does not include sheetwater.

SECTION 3. AMENDMENT. Section 61-31-03 of the North Dakota Century Code is amended and reenacted as follows:

61-31-03. Waterbank agreements. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of five or ten years, with provision for renewal for additional five- or ten-year periods. The commissioner shall reexamine the payment rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period, ~~in the light of the current land and crop values, and, providing that funds are available,~~ make needed adjustments in rates for any initial or renewal period.

~~Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner:~~

- ~~1. Types 3, 4, or 5 as defined in the United States fish and wildlife circular No. 39 (1971 edition).~~
- ~~2. Drainage of the wetlands would be feasible and practical.~~

SECTION 4. AMENDMENT. Section 61-31-04 of the North Dakota Century Code is amended and reenacted as follows:

61-31-04. Duties of landowner. In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas ~~he designates~~, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [Pub. L. 91-559; 16 U.S.C. 1301 et seq.]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as ~~he deems~~ appropriate.
2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.
3. Not to use such areas for agricultural purposes, except as determined by the commissioner.
4. To effectuate a wetland conservation and development plan for ~~his~~ the land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 61-31-07.
5. To forfeit all rights to further payments or grants under the agreement and the commissioner may require the landowner to refund to the state all payments or grants received thereunder upon ~~his~~ violation of the agreement ~~at any stage during the time he has control of the land subject to the agreement~~ if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make

refunds or accept such payment adjustments as the commissioner may deem appropriate if ~~he determines that~~ the violation ~~by the owner~~ does not warrant termination of the agreement.

6. Upon transfer of ~~his~~ the landowner's right and interest in the lands ~~subject to the agreement~~ during the agreement period, to forfeit all rights to further payments or grants under the agreement and the commissioner may require that landowner refund to the state all payments or grants received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.
7. ~~Not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement.~~
8. To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this chapter shall be made binding on any tenant or operator of the land covered by the agreement, ~~and the agreement shall so provide.~~

SECTION 5. AMENDMENT. Section 61-31-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-05. Duties of commissioner. In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner. If the landowner and commissioner agree, all or part of the payments to the landowner may be issued at the onset of the agreement.
2. ~~For the purposes of this chapter, provide~~ Provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate. ~~In making this determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the waterbank program.~~
3. ~~To increase~~ Increase the rate ~~or rates~~ of annual payments ~~as determined hereunder,~~ by an amount determined by the commissioner to be appropriate, ~~in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the landowner agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable state law.~~
4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released remains in a solid block, and if grazed is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The

release date must be determined by the commissioner with the approval of the director of the game and fish department. The landowner ~~has first option to~~ may hay or graze released land at a per-acre [.40 hectare] rate, established by the commissioner, which must be deducted from the next waterbank payment. ~~If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants.~~ If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner is entitled to receive that person's full waterbank payment.

5. The commissioner shall assemble a state assessment team that may assist the commissioner in fulfilling the objectives of the program. The state assessment team may make recommendations to the commissioner regarding applications, and develop management guidelines to be approved by the commissioner which include technical and management practices and rates of payment and a standardized priority system for evaluating applications. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.

SECTION 6. AMENDMENT. Section 61-31-07 of the North Dakota Century Code is amended and reenacted as follows:

61-31-07. Termination of agreement. The commissioner may terminate or amend any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest, ~~and may agree to any modification of agreements he may determine to be desirable to further the purposes of the program or facilitate its administration.~~

SECTION 7. REPEAL. Section 61-31-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 1, 1993
Filed April 2, 1993