

WATERS

CHAPTER 549

SENATE BILL NO. 2193

(Senator Traynor)
(Representatives D. Johnson, Nicholas)

DEVILS LAKE BONDS EXTENSION

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 Session Laws as amended by section 1 of chapter 559 of the 2001 Session Laws, relating to the issuance of bonds for construction of an outlet from Devils Lake.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws as amended by section 1 of chapter 559 of the 2001 Session Laws is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. Except for the issuance of bonds for construction of an outlet from Devils Lake, the authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective. The authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of an outlet from Devils Lake is effective through June 30, ~~2003~~ 2005, and after that date is ineffective. However, the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 550

HOUSE BILL NO. 1148

(Natural Resources Committee)

(At the request of the State Water Commission)

WATER BOARD EASEMENTS AND DAM PERMITS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to release of water resource board easements; and to amend and reenact sections 61-02-14.1, 61-16.1-38, and 61-16.1-53 of the North Dakota Century Code, relating to dam construction easements, dam construction permits, and dike and dam removal notices and hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-14.1. Release or assignment of easements - Procedure. The commission may, when it deems such action to be in the best interest of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful ~~and will not be reconstructed.~~ The commission may also assign such easements to a political subdivision if it determines the assignment would be in the best interests of the state. Any release ~~executed under the authority of this section or assignment~~ shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

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

Release of easements - Procedure. When it deems such action to be in the best interests of the district or other political subdivision, a water resource board or governing body of another political subdivision may release easements assigned to it from the state for the construction, operation, and maintenance of dams, along with access to the dams, if the dams are no longer useful.

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

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. 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~~ fifty acre-feet [~~45418.52~~ 61674.08 cubic meters] of water or ~~twenty-five~~ thirty acre-feet [~~30837.04~~ 39810.70 cubic meters] of water for a medium-hazard or high-hazard dam, may 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, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such

detail as the state engineer 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 the state engineer's initial review of the application and 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 to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ fifty acre-feet [~~15448.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ fifty acre-feet [~~15448.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in

accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to an appeal.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 551

SENATE BILL NO. 2126 (Natural Resources Committee) (At the request of the State Engineer)

WATER PERMITS AND IRRIGATION USE

AN ACT to amend and reenact subsection 6 of section 61-04-01.1, subsection 3 of section 61-04-05, and subsection 3 of section 61-04-05.1 of the North Dakota Century Code, relating to the definition of irrigation use, water permit applications, and water permit hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

6. "Irrigation use" means the use of water for application to more than one acre [.40 hectare] of land to stimulate the growth of agricultural crops or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

SECTION 2. AMENDMENT. Subsection 3 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

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 within a twelve-mile radius of 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.

SECTION 3. AMENDMENT. Subsection 3 of section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments may file additional written comments with the state engineer or request a hearing on the application, or both. A request for a hearing must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the hearing. If a request for a hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearing is made, or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in

the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

Approved March 12, 2003

Filed March 13, 2003

CHAPTER 552

SENATE BILL NO. 2278

(Senators Fischer, Heitkamp, Urlacher)
(Representatives Hanson, Koppelman, Nelson)

WATERCOURSE MAINTENANCE AND BRIDGE DEBRISMENT

AN ACT to amend and reenact section 61-16.1-09.1 of the North Dakota Century Code, relating to maintenance of natural watercourses and debrisement of bridges and low water crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisement of bridges and low water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises ~~within the watershed~~ benefited by the project. All provisions of this chapter apply to assessments levied under this section except:
 4. a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 2. b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.

2. Before an assessment may be levied under this section, a public hearing must be held attended by a quorum of the board and a quorum of the board of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 553

SENATE BILL NO. 2277

(Senators Fischer, Dever, Trenbeath)
(Representatives Hanson, Mueller, Nelson)

JOINT WATER BOARD AS POLITICAL SUBDIVISION

AN ACT to amend and reenact subsection 1 of section 61-16.1-11 of the North Dakota Century Code, relating to the joint exercise of powers by water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 61-16.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by this title. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint water resource board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board. A joint board created under this section is a political subdivision of the state.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 554

SENATE BILL NO. 2240

(Senators Heitkamp, G. Lee, Traynor)
(Representatives Amerman, D. Johnson, Nelson)

WATER PROJECT BIDS

AN ACT to amend and reenact sections 61-16.1-14, 61-21-45, 61-35-13, and 61-35-88 and subsection 2 of section 61-35-94 of the North Dakota Century Code, relating to bids for water district construction, maintenance, and improvement projects; and to declare an emergency.

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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, 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 the construction or maintenance exceeds ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, the board must let a contract in accordance with chapters 48-01.1 and 48-02.

SECTION 2. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 in any one year, 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 work exceeds ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 in any one year, a contract must be let in accordance with chapters 48-01.1 and 48-02. The competitive bid requirement is 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.

SECTION 3. AMENDMENT. Section 61-35-13 of the North Dakota Century Code is amended and reenacted as follows:

61-35-13. Contracts for construction or maintenance of a project. If the cost of construction or maintenance of a project does not exceed ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, the lowest and best bid must be accepted. The board must

comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

SECTION 4. AMENDMENT. Section 61-35-88 of the North Dakota Century Code is amended and reenacted as follows:

61-35-88. Call for bids - Contents - Advertising. Proposals for the work of making improvements provided for in this chapter that exceed ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

SECTION 5. AMENDMENT. Subsection 2 of section 61-35-94 of the North Dakota Century Code is amended and reenacted as follows:

2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03; or

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 555

SENATE BILL NO. 2280

(Senators Fischer, Every, Heitkamp, Urlacher)
(Representatives Hanson, Hawken)

FLOOD CONTROL PROJECT ASSESSMENTS

AN ACT to amend and reenact section 61-16.1-40.1 of the North Dakota Century Code, relating to the assessment for federally constructed flood control projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-40.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established. If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed one dollar and fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed one dollar and fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 556

SENATE BILL NO. 2362

(Senators Fischer, Espegard)
(Representatives Delmore, Maragos, Wieland)

FLOODPLAIN MANAGEMENT

AN ACT to amend and reenact sections 61-16.2-02, 61-16.2-06, 61-16.2-08, 61-16.2-09, 61-16.2-10, 61-16.2-13, and 61-16.2-14 of the North Dakota Century Code, relating to floodplain management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.2-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "Community" means any political subdivision that has the authority to zone.
3. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. 5. "Flood fringe" means that portion of a floodplain outside of the floodway.
- ~~5.~~ 6. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [.30 meter].
7. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
- ~~6.~~ 8. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.

For the purposes of this chapter, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this chapter by reference.

SECTION 2. AMENDMENT. Section 61-16.2-06 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-06. Permissible floodway uses. Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the floodway to the extent that they do not cause any ~~increase~~ measurable decrease in the ~~elevation of the base flood~~ hydraulic conveyance in the affected area.

SECTION 3. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

4. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:
 - a. 1. Any use permitted in the ~~designated~~ regulatory floodway pursuant to section 61-16.2-06.
 - b. 2. Structures, including residential, ~~commercial,~~ and ~~industrial nonresidential~~ structures; provided, that:
 - (1) ~~Such structures meet the standards either adopted by the community or if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.~~
 - (2) a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood ~~level~~ elevation unless granted a residential basement floodproof exception under the national flood insurance program.
 - (3) b. ~~Commercial and industrial~~ Nonresidential structures are either constructed on fill as specified in ~~paragraph 2 subdivision a~~ elevated to at least one foot [.30 meter] above the base flood elevation or are adequately floodproofed up to an elevation no lower than ~~one foot~~ two feet [~~30.48 centimeters~~ .61 meter] above the base flood ~~level~~ elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.
2. a. ~~Standards adopted by the community for structures in the flood fringe must meet or exceed the following:~~
 - (1) ~~Residential structures must be constructed on fill so that the lowest floor, including basements, is elevated to or above the base flood level unless granted a residential floodproof exception under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.].~~

(2) Commercial and industrial structures must be constructed on fill as specified in subdivision a or must be adequately floodproofed up to an elevation no lower than the base flood level. The floodproofing must be in accordance with the standards adopted by the community under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

b. Communities are encouraged to adopt standards that require residential structures to be constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level and commercial and industrial structures are constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level or the structures are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level.

SECTION 4. AMENDMENT. Section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-09. Enforcement and penalties.

1. It is unlawful for any person to establish any use which is not in accordance with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or community may obtain a court order directing the removal or elimination of such public nuisance; or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. ~~This chapter shall not apply to any construction or structures existing or for which a building permit has been issued in the floodplain prior to the adoption by the community of floodplain management ordinances under the national flood insurance program [42 U.S.C. 4001 et seq.].~~
3. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

SECTION 5. AMENDMENT. Section 61-16.2-10 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-10. Exceptions. This chapter shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any

such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.
2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program [42 U.S.C. 4001 et seq.] shall be an approved exception pursuant to this section. ~~On July 1, 1981, the state engineer shall immediately apply to the appropriate federal agency for an exception for the uses specifically described in this section.~~

SECTION 6. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance. ~~All communities~~ Communities that have residential, ~~commercial, or industrial~~ and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 7. AMENDMENT. Section 61-16.2-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-14. State engineer review of development in mapped regulatory floodways - Exceptions. Before issuing a permit or authorization to allow a use in a ~~mapped~~ regulatory floodway, the community responsible for permitting or authorizing such use shall notify the state engineer of the proposed use. The state engineer shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer, the community shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other technical information analyzing needed for the state engineer's review to analyze the proposed use and identifying to identify its proposed impact. Upon the request of the state engineer, the community shall provide additional information needed by the state engineer for the state engineer's review. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption on a case-by-case basis from this section. The state engineer may grant the exemption if the state engineer determines that the

community ~~has the technical hydraulic expertise to~~, by using its own technical review, can determine if the proposed use is in compliance with state and federal law.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 557

SENATE BILL NO. 2180

(Senators Bowman, Urlacher, Wardner)
(Representatives Kempenich, Kerzman)

SOUTHWEST WATER AUTHORITY DIRECTOR COMPENSATION

AN ACT to amend and reenact section 61-24.5-04 of the North Dakota Century Code, relating to compensation of the members of the board of directors of the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-04. Board of directors - Officers - Meetings - Compensation.

The authority must be governed by a board of directors who must be chosen in accordance with this chapter. One director must be elected from each county within the authority, and two directors must be elected in the city of Dickinson. The director from Stark County may not be a resident of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members are entitled to receive as compensation in the an amount determined by the board not to exceed sixty-two dollars and fifty cents the amount per day provided members of the legislative council under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 558

SENATE BILL NO. 2419

(Senators Stenehjem, Christmann, Heitkamp)

(Representatives Berg, Boucher, Drovdal)

(Approved by the Delayed Bills Committee)

WATER QUALITY STANDARDS ENFORCEMENT

AN ACT to amend and reenact subsection 5 of section 61-28-02, subsections 1 and 3 of section 61-28-06, section 61-28-07, and subsection 5 of section 61-28-08 of the North Dakota Century Code, relating to penalties for violating injunctive orders preventing Clean Water Act violations, to clarify the state's authority to seek injunctive relief against governmental entities that violate water quality standards of the state, and authority of the state to protect water quality from degradation; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Person" includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 61-28-06 of the North Dakota Century Code are amended and reenacted as follows:

1. It shall be unlawful for any person:
 - a. To cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
 - b. To discharge any wastes into any waters of the state, or to otherwise cause pollution, which ~~reduce~~ reduces the quality of such waters below the water quality standards established therefor by the department.
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. The department may seek injunctive relief for a threatened or continuing violation of a water quality standard, including any violations of the narrative standards, if the department determines that the violation will substantially interfere with or cause or threaten to cause long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community. The authority to seek injunctive relief for a violation of the water quality standards, including violations of the

narrative standards, is limited to the department, after obtaining written approval of the governor, and may not be enforced by any other person.

SECTION 3. AMENDMENT. Section 61-28-07 of the North Dakota Century Code is amended and reenacted as follows:

61-28-07. Proceedings. Any proceeding under this chapter for issuance or modification of rules, including emergency orders relating to control of water pollution or for determining compliance with or violation of this chapter, or adoption of any rule or order under this chapter by the department, must be conducted in accordance with chapter 28-32. Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule or order issued under this chapter may request a hearing by the department. There is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department, without further notice or hearing, may issue an order reciting the existence of the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding this chapter, the order is effective immediately. Any person to whom the order is directed shall comply immediately, but on application to the department must be afforded a hearing before the department within ten days. On the basis of that hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where the endangerment to welfare is to the livelihood of those persons, or upon receipt of evidence that pollution causes or threatens to cause a continuing violation of water quality standards in a manner that substantially interferes with or causes long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to the pollution, or to otherwise enjoin any pollution causing a substantial water quality violation as described in this section, or to take such other action as may be necessary.

SECTION 4. AMENDMENT. Subsection 5 of section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter. In addition to any other penalties provided in this section, or other provisions of this code, any person who violates an order for injunctive relief is subject to sanctions, not to exceed twenty-five thousand dollars per day per violation. In determining the amount of the sanction, the court shall consider the seriousness of the violation or violations, any good-faith efforts to comply with the court's order, any history of such violations, the economic impact of the sanction on the violator, the environmental and economic impacts to the resource caused by the violation or violations, the comparative environmental and economic impacts on any other resources affected, if any, and such other matters as justice may require. As an additional sanction for violating an order, the court may

hold the violator in contempt and, upon the state's motion, may allow a sanction up to the value of any damages that occur to the state as a result of the violation. The authority to seek sanctions under this subsection is limited to the department or to the attorney general bringing an action on behalf of the state and may not be enforced by any other person.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 559

SENATE BILL NO. 2258

(Senators Fischer, Espegard, Heitkamp)
(Representatives Aarsvold, Carlson, Delmore)

LAKE AGASSIZ WATER AUTHORITY AND GDCD DIRECTOR COMPENSATION

AN ACT to provide for creation of the Lake Agassiz water authority; and to amend and reenact section 61-24-04 of the North Dakota Century Code, relating to compensation of the members of the board of directors of the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24-04. Compensation of directors. Each member of the board of directors of the district is entitled to receive as compensation from the district ~~sixty-two dollars and fifty cents compensation~~ an amount determined by the board of directors not to exceed the amount provided for members of the legislative council under section 54-35-10 per day and must be reimbursed for the member's expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the board or otherwise engaged in the official business of the district.

SECTION 2. Findings and declaration of policy. The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern North Dakota. Sections 2 through 6 of this Act do not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

SECTION 3. Lake Agassiz water authority created. The Lake Agassiz water authority consists of cities and water districts located in that part of the state which is included within the boundaries of: Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Sargent, and Richland Counties and that pay dues to the authority. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in sections 2 through 6 of this Act, or which may be reasonably implied. Cities and water districts may pay dues to the authority as determined by the authority.

SECTION 4. Lake Agassiz water authority - Board of directors. The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.

City members must be selected for two-year terms by election by cities located east of state highway 1 during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Water district members must be selected for two-year terms by election by water districts located east of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Garrison Diversion Conservancy District.

SECTION 5. Board of directors - Officers - Meetings. The board of directors may adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board and a dues structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held by the same

individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

SECTION 6. Authority of the district. The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by sections 2 through 6 of this Act, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the state, its agencies, or its political subdivisions in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water throughout eastern North Dakota within or outside the territorial boundaries of the authority.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract for a supply of water from the Garrison Diversion Conservancy District and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
9. Borrow money as provided in sections 2 through 6 of this Act.

10. Issue and sell bonds in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project.
11. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
12. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project.
13. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
14. Pledge revenues of the authority to the punctual payment of principal and interest on bonds. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended.
15. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
16. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter into agreements with the agency respecting the loan or grants.
17. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under sections 2 through 6 of this Act, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under sections 2 through 6 of this Act.

Approved March 27, 2003

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