Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2298

Introduced by

Senators G. Lee, Anderson, Wanzek

Representatives Berg, S. Kelsh, Pollert

A BILL for an Act to create and enact eleven new sections to chapter 61-24 of the North Dakota Century Code, relating to authorizing revenue bonds for the Red River valley water supply project; and to amend and reenact sections 61-24-01, 61-24-08, 61-24-19, 61-39-01, and 61-39-03 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24-01. Development and utilization of land and water resources declared a public purpose - Declaration of intention - Interpretation. It is hereby declared that more effective development and utilization of the land and water resources of this state, protection and preservation of the benefits therefrom, opportunity for greater economic security, protection of health, property and enterprise, and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose, the accomplishment of which, among other things, demands, and it is hereby declared necessary, that the Garrison diversion unit of the Missouri River basin project as authorized by Act of Congress approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof and supplementary thereto, be established and constructed:

1. To provide for the future economic welfare and prosperity of the people of this state, and particularly of the people residing in the area embraced within the boundaries of the conservancy district created by this chapter.
2. To provide for the irrigation of lands within the sections of such district periodically afflicted with drought, and to stabilize the production of crops thereon.

3. To replenish and restore the depleted waters of lakes, the Red, Sheyenne, James, and other rivers, and streams in the district, and to stabilize the flow of these streams.
4. To replenish the waters, and to restore the level of Devils Lake, Stump Lake, Lake Williams, and Turtle Lake.
5. To make available within <u>or outside</u> the district, waters diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public uses.
<u>6. To study and provide for the water needs of eastern North Dakota communities and water districts and western Minnesota communities through a Red River valley water supply project.</u>

The provisions hereof shall not be construed to, in any manner, abrogate or limit the rights, powers, duties, and functions of the state water commission, but shall be held to be supplementary thereto and an aid thereof. Nor shall this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization and maintenance of irrigation districts, flood irrigation districts, water resource districts, drainage districts, or watershed protection districts, nor as precluding the establishment of any such district wholly or in part within the boundaries of the district created by this chapter.

SECTION 2. AMENDMENT. Section 61-24-08 of the North Dakota Century Code is amended and reenacted as follows:

61-24-08. Powers and duties of the district board of directors. The board of directors of the Garrison Diversion Conservancy District shall have the power:

1. To sue and be sued in the name of the district.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, reservoirs, canals, hydroplants, irrigation systems, <u>pipelines,</u> and any other device for the conservation, storage and use of water, and to secure the right of access to such works and the right of the public access to the waters impounding thereby or emanating therefrom.

3. To 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 Garrison diversion unit, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the Garrison diversion unit, or any part thereof.
5. To furnish assurances of cooperation and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the performance of obligations entered into with the United States for the construction, operation, or maintenance of works of the Garrison diversion unit of the Missouri River basin project as defined by Act of Congress, approved December 22, 1944 [58 Stat. 887], and acts amendatory thereof or supplementary thereto.
6. To construct separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the district.
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the Garrison diversion unit, or any part thereof.
9. In 1961 and each year thereafter to levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors, technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the

performance of obligations entered into with the United States of America in connection with the construction, operation, and maintenance of works of the said Garrison diversion unit of the Missouri River basin project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall 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, bonds and mortgages or other securities the payment of which is guaranteed by the United States or an instrumentality or agency thereof, or bonds or certificates of indebtedness of the state of North Dakota or any of its political subdivisions. The amount which may be levied in any one year for operating the district prior to authorization by Congress of the Garrison diversion project shall not exceed ten percent of the maximum permissible.

10. To enter into a contract or contracts for a supply of water from the United States and to sell, lease, and otherwise contract to furnish any such water for beneficial use to irrigation districts, persons, other public and private corporations, or limited liability companies within <u>or outside</u> the district.

11. To operate and maintain or to contract for the operation and maintenance of water supply and irrigation works serving lands and uses within <u>or outside</u> the district, and in connection therewith, to maintain a reserve fund to meet major unforeseen costs of operation and maintenance.

12. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States and authorization to make collections of money for and on behalf of the United States in connection with the Garrison diversion unit.

13. To use navigable lakes and streams within the conservancy district for holding, impounding, and conveying water of the Garrison diversion unit.

14. To provide administrative aid and assistance in the relocation of buildings and the replacement of land to persons affected by the Garrison diversion development in an effort to make certain that such persons are treated fairly and that they do not suffer financial hardship due to the development of the Garrison diversion unit.

15. To sell or exchange any and all real property purchased or acquired by the district. All moneys received pursuant to any such sale or exchange shall be deposited in the Bank of North Dakota to the credit of the district and may be disbursed only for the payment of expenses of the district as specified in subsection 9.

16. To borrow money as is provided in this chapter.

17. To issue and sell revenue bonds to finance projects in an amount or amounts determined by the board, including an amount for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of constructing a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.

18. To utilize some or all proceeds of its revenue bonds to acquire, construct, reconstruct, or improve one or more projects, or any feasibility study or preliminary economic, engineering, or legal work relating to any project.

19. To refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the district.

20. To pledge any and all income, profits, and revenues received by the district in connection with the operation, lease, sale, or other disposition of all or any part of a water project to secure the payment of bonds issued and sold to finance the project or otherwise. Tangible real or personal nonrevenue property of the district may not be liable to be forfeited or taken in payment of any bonds issued under this chapter and debt on the general credit of the district may not be incurred in any manner for payment of bonds under this chapter.

21. To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the district and in anticipation of the collection of the revenues of the district, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, extension, operation, or maintenance of a project.

22. To pledge district revenues, grants, and any other project-related payments to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the district which may be constructed

or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the district improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the district and persons that contract to purchase water from the district.

23. To 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 tangible real or personal nonrevenue property of the district may not be created by an such contract or instrument.

24. To accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter agreements with the agency respecting the loan or grants.

25. To contract debts and borrow money and provide for payment of debts and expenses of the district.

26. To distribute water to western Minnesota cities that enter water service contracts for water.

27. To enter water service contracts with municipalities, water districts, or other political subdivisions in this state and public utilities in Minnesota as part of the Red River valley water supply project, regardless of whether the acquisition, construction, or reconstruction of any Red River valley water supply project is actually completed and whether water actually is delivered under the contracts. These contracts with cities and water districts are authorized to be executed without limitation on term of years notwithstanding any limitation to the contrary.

SECTION 3. AMENDMENT. Section 61-24-19 of the North Dakota Century Code is amended and reenacted as follows:

61-24-19. Easement granted for ditches, pipelines, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the Garrison diversion unit of the Missouri River basin project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for ditches, pipelines, or canals and for tunnels, tramways,

and telephone and electric transmission lines constructed as part of the Garrison diversion unit; provided, however, that the director of the department of transportation, the board of county commissioners, or the board of township supervisors must approve the plans of the bureau of reclamation with respect to the use of any and all right of way of roads under their respective control prior to such grant becoming effective.

SECTION 4. Eleven new sections to chapter 61-24 of the North Dakota Century Code are created and enacted as follows:

Resolution authorizing the issuance of revenue bonds.

1. The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.
2. Each resolution providing for the issuance of bonds provided for in this chapter must contain the purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

Provisions governing bonds. The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after adoption of the original resolution must prescribe:

1. The rates of interest, or if an interest rate is variable, the method for calculating the interest rate.
2. Whether the bonds will be in one or more series.
3. The dates the bonds will bear.
4. The times the bonds will mature.
5. The medium in which the bonds will be payable.
6. The places where the bonds will be payable.
7. The terms of redemption, if any, to which the bonds will be subject.
8. The manner in which the bonds will be executed.
9. The terms, covenants, and conditions that the bonds will contain.
10. The form in which the bonds will be issued, either coupon or registered.

Sale of bonds - When private sale authorized - Public sale and notice. Revenue bonds or refunding bonds may be sold at public or private sale on any terms as the board deems appropriate.

Notes issued pending preparation of bonds - Negotiability. Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the district.

Validity of notes and bonds. Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the individuals whose signatures appear on the notes or bonds have ceased to be officers of the issuing district. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

Notes and bonds exempt from taxation. Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other entities carrying on an investment business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their interest and income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

Covenants and provisions that may be inserted in resolution authorizing bonds.

1. Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:
   a. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.
   b. The use and disposition of all or a portion of the district's income, profits, and revenues.

c. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.

d. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.

e. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.

f. The creation, priority, and enforcement of liens against the district's income, profits, or revenues.

g. The issuance of other or additional bonds or instruments payable from, or constituting a charge against, the district's income, profits, or revenues.

h. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the district's borrowing rate or reduce its exposure to interest rate risk, or both.

i. The keeping, inspection, and audit of books of account.

j. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.

k. The rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations.

l. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of the trustee, and the limitations of liabilities of the trustee.

m. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.

n. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which the consent may be given.

o. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent determined feasible and desirable by the governing body, to other bonds or obligations of the district issued to finance or refinance a project or that may be outstanding when the bonds thus subordinated are issued and delivered.

p. Provisions with respect to the district entering an agreement with a private bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a guarantee, a letter or credit, or any other credit or liquidity enhancement that the district may find to be advantageous or necessary to insure, guaranty, or enhance the payment of the principal of or interest on or liquidity for some or all of the bonds. The cost of the enhancement or liquidity may be paid from bond proceeds or from other funds of the district available for this purpose.

q. The insurance to be carried upon the project and the use and disposition of insurance moneys.

2. This section does not authorize the district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

Liability of district for notes and bonds - Taxing power prohibited. Bond anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to the bond's payment and the district's notes and bonds may not be subject to any pecuniary liability. The holder of any of these notes or bonds may not enforce payment of the notes or bonds against any tangible real or personal nonrevenue property of the district. Notes and bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any tangible real or personal nonrevenue property of the district, other than the revenues pledged to their payments. Each note and each bond issued under this chapter must recite in substance that the note or bond and interest on the note or bond is payable solely from the revenue pledged to the payment and

that the note or bond does not constitute a debt of the state within the meaning of any constitutional or statutory limitation.

Duties of district and officers relative to the issuance of bonds.

1. To adequately secure the payment of bonds and interest on the bonds, the district and its officers, agents, and employees shall:

   a. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.

   b. Make certain any project financed by the district is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. The fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least to:

      (1) Pay all current expenses of operation and maintenance of any project;

      (2) Make all payments required under any water purchase contract the district may execute;

      (3) Pay the interest and principal on the district's notes and bonds as they become due;

      (4) Comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the funding bonds; and

      (5) Meet any other obligations of the district that are charges, liens, or encumbrances upon the revenues of the district.

   c. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the district in good repair, working order, and condition.

   d. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.

e. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.

f. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.

g. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.

h. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the district are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

2. The duties contained in this section do not require any expenditure by the district of any funds other than revenue received from a project or water sale contract. The performance of the duties in this section is of the essence of the contract of the district with the bondholders.

Remedies of bondholders in general.

1. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

a. By mandamus or other civil action, enforce the holder's rights against the district and its board and any of its officers, agents, or employees and may require the district or the board or any officers, agents, or employees of the district or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.

b. By civil action, require the district and the board to account as if the district and the board were the trustees of an express trust.

c. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.

d. Bring suit upon the bond.

2. A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

Bonds as legal investments and security. Notwithstanding any other provision of law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, credit unions, investment companies, insurance companies, and other persons carrying on an investment business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued under this chapter, and the bonds are authorized security for all public deposits.

SECTION 5. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. 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. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

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. This chapter does 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 6. AMENDMENT. Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

61-39-03. 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.
8. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.

North Dakota 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. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. 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 Lake Agassiz water authority <u>or the Garrison Diversion Conservancy District</u>.