

WATERS

CHAPTER 511

HOUSE BILL NO. 1482 (Representatives Grosz, Dorso, Boucher)

DEVILS LAKE AND WATER DEVELOPMENT BONDS

AN ACT to provide for the issuance of bonds to finance construction of an outlet to Devils Lake and to finance a statewide water development program; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster. It further finds that construction of an outlet to Devils Lake is necessary for the protection of health, property, and enterprises, and for the promotion of prosperity and the general welfare of the people of the state of North Dakota, and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary that an outlet for Devils Lake be constructed by the state water commission to provide flood relief to the Devils Lake basin.
2. The legislative assembly also finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
3. In furtherance of these public purposes, the state water commission may issue bonds under chapter 61-02 in an aggregate amount not to exceed twenty million dollars to finance the cost of these projects provided that:
 - a. The commission may only issue bonds for construction of an outlet to Devils Lake when the United States authorizes construction of an outlet including plans addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet.
 - b. The commission may only issue bonds to finance a comprehensive statewide water development program pursuant to this Act when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbonneau-Timber Creek irrigation district; the

Williston irrigation project; the Oakes irrigation project; other municipal, rural, and industrial water supply projects; delivery of Missouri River water to the Sheyenne River; and an inlet to Devils Lake. This Act does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02.

- c. The commission shall notify the budget section of the legislative council if either of the contingencies in subdivision a or b occur and bonds are issued under this Act.
- d. The authority of the commission to issue bonds under this Act is effective through July 1, 1999, and after that date is ineffective.

SECTION 2. State water commission may match federal funds. The state water commission may use all or part of the proceeds of bonds issued as provided in this Act to match any federal funds available for the projects identified in subdivisions a and b of subsection 3 of section 1 of this Act. Proceeds realized from the sale of bonds under this Act are available to match federal funds in the ratio of one to three.

SECTION 3. Limitation of action. No action may be brought or maintained in any court in this state questioning the validity of any bonds issued under this Act unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after the effective date of this Act in and by which the constitutionality and validity of the bonds to be issued pursuant to this Act may be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

SECTION 4. Bonds payable from appropriations and other revenues.

1. Bonds issued under this Act are payable from transfers to be made by the legislative assembly from the accumulated and undivided profits of the Bank of North Dakota to the resources trust fund and thereafter appropriated for payment of the bonds or from appropriations of other available revenues, and other revenues available to the state water commission for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project.
2. Obligations issued under the provisions of this Act do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the accumulated and undivided profits of the Bank of North Dakota or other sources provided for by the legislative assembly.
3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued under this Act an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water

commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

SECTION 5. APPROPRIATION. The sum of \$2,000,000, or so much of the sum as may be necessary, is transferred from the accumulated and undivided profits of the Bank of North Dakota to the resources trust fund. Upon transfer of the funds by the Bank of North Dakota, there is hereby appropriated out of any moneys in the resources trust fund, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the state water commission for the biennium beginning July 1, 1997, and ending June 30, 1999, for the purpose of paying the interest on and principal of the bonds issued in accordance with this Act.

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

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 512

HOUSE BILL NO. 1073

(Legislative Council)
(Water Resources Committee)
(Representative Olson)
(Senators Goetz, Urlacher)

EASTERN NORTH DAKOTA WATER SUPPLY CRITICAL PRIORITY

AN ACT relating to establishing a water supply for eastern North Dakota as a critical priority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Findings and declaration of policy - Water to eastern North Dakota a critical priority. The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota with water supplies from the Missouri River may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; 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. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for purposes including domestic, rural water, municipal, livestock, light industrial, mining, agriculture, and other uses must be developed. In furtherance of this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall continue to cooperate with the Garrison diversion conservancy district in addressing this critical priority.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 513**SENATE BILL NO. 2104**

(Natural Resources Committee)

(At the request of the State Water Commission)

WATER COMMISSION MEETINGS

AN ACT to amend and reenact section 61-02-08 of the North Dakota Century Code, relating to meetings of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-08 of the North Dakota Century Code is amended and reenacted as follows:

61-02-08. Meetings of commission. ~~Notice of any meeting of the commission shall be given by written notice sent to each member of the commission at least three days before the meeting. No notice shall be necessary for any member who has personally signed an admission of notice and consent to holding the meeting.~~ The commission may hold meetings at such times and places as it, by resolution, may provide. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of the governor's absence or disability the vice chairman shall preside.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 514

SENATE BILL NO. 2105

(Natural Resources Committee)

(At the request of the State Water Commission)

CONTRACT FUND PURPOSES

AN ACT to amend and reenact section 61-02-64.1 of the North Dakota Century Code, relating to the purpose of the contract fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 61-02-64.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer. All contractual obligations of the commission, including obligations with respect to any works financed with bonds issued under this chapter, and excepting salaries and expenses of commission employees and the cost of any office supplies, materials, and equipment not related to works financed with bonds, ~~shall~~ must be paid from the contract fund. The moneys in the contract fund ~~shall~~ must be paid out or disbursed in ~~such the~~ the manner ~~as may~~ be determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, ~~shall~~ must be deposited with the state treasurer and are hereby appropriated out of the state treasury, and ~~shall~~ must be credited to the contract fund or held pursuant to the terms of the resolution or trust indenture of the commission adopted or entered into under this chapter.

Approved March 21, 1997

Filed March 21, 1997

¹ Section 61-02-64.1 was also amended by section 1 of House Bill No. 1170, chapter 515.

CHAPTER 515

HOUSE BILL NO. 1170

(Representatives Wald, Jacobs, Kempenich)
(Senators Goetz, Krauter, Urlacher)

SOUTHWEST PIPELINE PROJECT BONDS

AN ACT to amend and reenact sections 61-02-64.1, 61-02-64.2, 61-24.3-01, and 61-24.3-18 of the North Dakota Century Code, relating to repayment of obligations with respect to bond issues and to issuing and repaying bonds for the southwest pipeline project; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Section 61-02-64.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer. ~~All~~ Unless otherwise provided under the terms of a bond resolution or trust indenture adopted by the commission pursuant to this chapter, all contractual obligations of the commission, including obligations with respect to any works financed with bonds issued under this chapter, and excepting salaries and expenses of commission employees and the cost of any supplies, materials, and equipment ~~not related to works financed with bonds, shall, must~~ be paid from the contract fund. The moneys in the contract fund ~~shall~~ must be paid out or disbursed in ~~such the manner as may be~~ determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, ~~shall~~ must be held pursuant to the terms of the resolution or trust indenture adopted by the commission pursuant to this chapter or deposited with the state treasurer and are hereby appropriated out of the state treasury, and shall be credited to the contract fund or held pursuant to the terms of the resolution or trust indenture of the commission adopted or entered into under this chapter. Moneys deposited with the state treasurer are appropriated to the commission and must be credited to the contract fund.

SECTION 2. AMENDMENT. Section 61-02-64.2 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.2. Repayment of loan proceeds and reimbursements deposited in resources trust fund. Notwithstanding section 61-02-64.1, any repayment made after January 1, 1991, of any loans disbursed from the contract fund or resources trust fund and any moneys paid to the state or the commission after January 1, 1991, to reimburse the commission for moneys, other than bond proceeds, used for

² Section 61-02-64.1 was also amended by section 1 of Senate Bill No. 2105, chapter 514.

municipal, rural, and industrial water supply projects must be deposited in the resources trust fund in the state treasury.

SECTION 3. AMENDMENT. Section 61-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-01. Legislative findings and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed fifteen million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter ~~shall~~ may not be construed to, in any manner, abrogate or limit the rights, powers, duties, ~~and~~ or functions of the state water commission or the state engineer, but ~~shall be~~ are supplementary thereto. Nor ~~shall~~ may this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

SECTION 4. AMENDMENT. Section 61-24.3-18 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-18. Water rates for capital costs - Deposit. Money derived and received from water user entities for capital costs of the southwest pipeline project ~~shall~~ may be pledged by the commission for the repayment of bonds issued for the construction of the southwest pipeline project. Any money not pledged must be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and ~~shall~~ may be expended only pursuant to legislative appropriation for the purposes specified in subsection 1 of section 57-51.1-07.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 516

SENATE BILL NO. 2260

(Senators Traynor, Thompson)
(Representatives D. Johnson, Kunkel)

LAKE OBSTRUCTION REMOVAL

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, relating to removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake; to amend and reenact section 57-28-09 of the North Dakota Century Code, relating to tax deeds issued to the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake.

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to a lake that has been determined to be navigable by a court are, or are imminently likely to be, a menace to life or property or public health or safety, the state engineer shall issue an order to the person responsible for the object. The order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is imminently likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. The person responsible is the person who owns or has control of the property on which the object is located, or if the property is inundated with water, the person who owned or had control of the property immediately before it became inundated by water.
2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the state engineer may cause the action to be taken. The state engineer may require the action to be taken in less than twenty days if an emergency exists.
3. The state engineer may bring an action to enforce an order of the state engineer, or if the state engineer causes the action to be taken, the state engineer may:

 - a. Assess the costs of taking such action, or such portion as the state engineer determines, against any property of the person responsible; or

- b. Bring a civil action against the person responsible to recover the costs incurred in taking the action.

If the state engineer chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the state engineer may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.

4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. In the event of an emergency, the state engineer may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal unless the hearing was denied by the state engineer.
7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is imminently likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the state engineer in the form and manner required by the state engineer. Unless the amount of compensation is agreed to between the claimant and the state engineer, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

SECTION 2. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not been assigned or redeemed, the county auditor shall issue a tax deed to the county, or in cases in which the state engineer has made an assessment against the property under section 1 of this Act, the county auditor shall issue a tax deed to the state. The tax deed passes the property in fee to the county or the state, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of expiration of the period of redemption and except for a homestead credit for special assessments lien provided for in section 57-02-08.3. While the county or the state holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners or the state has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 517

SENATE BILL NO. 2079

(Natural Resources Committee)
(At the request of the State Engineer)

RURAL WATER SYSTEM WATER RIGHTS

AN ACT to create and enact a new subsection to section 61-04-01.1 of the North Dakota Century Code, relating to the definition of rural water system; and to amend and reenact sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code, relating to forfeiture of water rights held by rural water supply systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-04-01.1 of the North Dakota Century Code is created and enacted as follows:

"Rural water system" means a water supply system designed to serve regional needs.

SECTION 2. AMENDMENT. Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. 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 the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless ~~such~~ the failure or cessation of use has 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~~ the water permit or right forfeited. For purposes of this chapter, an incorporated municipality or rural water system 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 or the rural water system. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of

every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

SECTION 4. AMENDMENT. Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

The notice ~~shall~~ must be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by ~~such~~ the appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, ~~such~~ the notice ~~shall~~ must be published in a newspaper of

general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 5. AMENDMENT. Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 7, 1997

Filed March 10, 1997

CHAPTER 518

SENATE BILL NO. 2265

(Senators Nething, Klein)
(Representative DeKrey)

IRRIGATION DISTRICT BONDS

AN ACT to create and enact a new subsection to section 61-07-03 and two new sections to chapter 61-08 of the North Dakota Century Code, relating to the issuance of revenue bonds; to amend and reenact sections 61-07-07, 61-07-08, 61-08-01, 61-08-06, 61-08-07, 61-08-09, 61-08-12, 61-08-13, 61-08-14, 61-08-22, 61-08-23, 61-08-25, 61-08-26, 61-08-27, 61-08-28, 61-08-29, 61-08-34, 61-08-35, 61-08-39, 61-09-13, and 61-09-14 of the North Dakota Century Code, relating to powers and bonds of irrigation districts; and to repeal sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18, 61-08-19, 61-08-20, 61-08-21, 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota Century Code, relating to registration of bonds, cancellation of bonds, issuance of warrants, and terms of refunding bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-07-03 of the North Dakota Century Code is created and enacted as follows:

Acquire real property, buildings, improvements, and equipment used or useful in connection with storing, warehousing, distributing, or selling agricultural products, which may be located within or outside the district.

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

61-07-07. Board to formulate general plan of operation - Contents. As soon as practicable after the organization of an irrigation district, the board of directors, by a resolution entered on its records, shall formulate a general plan of its proposed operation in which it ~~shall~~ must state:

1. What constructed works or other property are proposed to be purchased, the purchase price ~~thereof~~, and what construction work is proposed to be done, and the estimated cost of ~~such~~ the construction.
2. Whether funds to pay ~~such~~ the purchase price or cost of construction ~~shall~~ will be raised by issuing bonds ~~or district improvement warrants~~ or by creating a fund through the collection of ~~water~~ rentals ~~or~~ charges from water users, or by creating a fund by levying assessments against the lands benefited, or whether it is contemplated to raise funds by the use of all or a combination of ~~such~~ those methods of raising funds.

SECTION 3. AMENDMENT. Section 61-07-08 of the North Dakota Century Code is amended and reenacted as follows:

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report. For the purpose of ascertaining the cost of any irrigation construction work in a district, the board shall

cause such surveys, examinations, and plans to be made as ~~shall~~ may demonstrate the practicability of ~~such~~ the plan and furnish the proper basis for an estimate of the cost of carrying out the ~~same~~ plan. All ~~such~~ surveys, examinations, maps, plans, and estimates ~~shall~~ must be made under the direction of a registered professional engineer, who may be the state engineer, and ~~shall~~ must be certified by the registered professional engineer. The board ~~then~~ shall submit a copy of ~~the same~~ to the state engineer who shall prepare a summary report ~~thereon~~ and file the ~~same~~ report with the board. ~~Such~~ The report ~~shall~~ must contain such matters as in the judgment of the state engineer ~~may be~~ are desirable. Upon receiving ~~such~~ the report, the board of directors shall ~~proceed to~~ determine the amount of money required to be raised.

SECTION 4. AMENDMENT. Section 61-08-01 of the North Dakota Century Code is amended and reenacted as follows:

61-08-01. Resolution to institute initial proceedings for bonds - Contents - Adoption. Proceedings for the issuance of bonds by an irrigation district ~~shall~~ must be instituted by the adoption of an initial resolution ~~therefor~~ by the board of directors of the district. ~~Such~~ The initial resolution ~~shall~~ must state:

1. The maximum principal amount of bonds proposed to be issued.
2. ~~The maximum interest rate they shall bear.~~
3. ~~Whether they will be of serial or single maturity.~~
4. ~~If a single maturity, the year thereof, or if serial maturities, the years of such maturities, but not the amount for each of such years.~~
5. The purpose for which ~~they~~ the bonds are proposed to be issued.
6. 3. The total amount of bonded indebtedness, if any, of the district.
7. 4. Any other statement of fact deemed advisable by the board.

~~Such~~ The initial resolution may be adopted by a majority of the board at any regular meeting ~~thereof~~ or at any special meeting of which the prescribed notice has been given.

SECTION 5. AMENDMENT. Section 61-08-06 of the North Dakota Century Code is amended and reenacted as follows:

61-08-06. Maturity of bonds issued - When installment of principal falls due - Amount Bonds - Terms. Bonds issued by any irrigation district under the provisions of this chapter ~~shall~~ must be in the denominations and form, be subject to redemption with or without premium, and be subject to any other terms or conditions as the board of directors may determine, and must mature in not ~~less than ten years nor~~ more than forty years ~~after the date thereof~~ from the date of the bonds. If the maturities are serial, the first installment of principal ~~shall~~ must fall due not more than three years, and the last installment not more than forty years, from the date of the bonds. ~~No installment of principal shall be less than one-third of the amount of the largest installment, except that the amounts of installments of principal may be such that the increase thereof from year to year approximately shall equal the decrease from year to year in the interest on the bonds remaining unpaid.~~

SECTION 6. AMENDMENT. Section 61-08-07 of the North Dakota Century Code is amended and reenacted as follows:

61-08-07. Bonds payable to whom - Interest coupons - Rate of interest - Numbering. Every bond provided for in this chapter shall must be a negotiable instrument payable to "bearer" or to the "bearer or registered owner", with interest coupons attached, payable annually or semiannually, and must bear interest at a rate or rates resulting in an average annual net interest cost rate which shall must not exceed twelve percent per annum ~~on these issues which if the bonds are sold at private sale.~~ There is no interest rate ceiling on ~~these issues~~ bonds sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Each bond shall must specify the time and place of payment of the principal ~~and shall be numbered consecutively with the other bonds of the same issue, which shall begin with number one, or with any other number, as the board may direct.~~

SECTION 7. AMENDMENT. Section 61-08-09 of the North Dakota Century Code is amended and reenacted as follows:

61-08-09. Execution of bonds and interest coupons - Validity of bonds not impaired by change in officers. The bonds issued under the provisions of this chapter shall must be executed in the name of and for the district by the manual or facsimile signatures of the chairman and secretary of the board. ~~The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers.~~ The validity of every bond so executed shall remain unimpaired is not impaired by the fact that ~~one or more of the a~~ subscribing or attesting officers have officer has ceased to be ~~such an officer or officers of the district~~ before delivery to the purchaser.

SECTION 8. AMENDMENT. Section 61-08-12 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Section 61-08-13 of the North Dakota Century Code is amended and reenacted as follows:

61-08-13. Opening bids for bond issues - Record of bids kept - Bids accompanied by check. At the time specified for opening the bids for bonds, the secretary of the board publicly shall open the bids in the presence of the directors board, and after the bids have been opened, the secretary shall enter in a permanent

record the amount and rate of interest of each bid and the name and address of the bidder. Each bid ~~shall~~ must be accompanied by a certified check, cashier's check, surety bond, or bank draft in the amount of not less than ~~two~~ one percent of ~~such~~ the bid.

SECTION 10. AMENDMENT. Section 61-08-14 of the North Dakota Century Code is amended and reenacted as follows:

61-08-14. Awarding sale of bond issue - Rejecting bids - ~~Purchasing irrigation works already constructed.~~ The board of directors shall award the sale of bonds to the bidder who agrees to purchase them upon the terms most favorable to the district, except that the board may reject any and all bids. No sale ~~shall~~ may be for less than ninety-eight percent of the par value and accrued interest on such the bonds. ~~If the board has determined to purchase irrigation works already constructed, the bonds may be issued and delivered at their par value in payment thereof.~~

SECTION 11. AMENDMENT. Section 61-08-22 of the North Dakota Century Code is amended and reenacted as follows:

61-08-22. Bonds and district improvement warrants may be secured by trust indenture - Powers vested in trustee. In the discretion of the board, bonds ~~and district improvement warrants~~ may be secured by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside this state. The board may vest in ~~such the~~ the trustee the right to enforce any covenant made to secure or to pay ~~such the~~ the bonds ~~or improvement warrants.~~

SECTION 12. AMENDMENT. Section 61-08-23 of the North Dakota Century Code is amended and reenacted as follows:

61-08-23. Where money received from bond issue ~~or improvement warrants~~ placed - Lien on money. All money received from any bond issue ~~or from the sale of district improvement warrants~~ shall must be placed in a fund and applied solely ~~to the payment of the cost of the works for the purpose for which it was borrowed and for no other purpose except that the money may be temporarily invested in securities approved by the board.~~ A lien is granted upon ~~such the~~ the money until so applied, in favor of the owners or holders of ~~such the~~ the bonds ~~or improvement warrants~~ or in favor of the trustee ~~created~~ appointed in connection with ~~such the~~ the bonds ~~or improvement warrants.~~

SECTION 13. AMENDMENT. Section 61-08-25 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 14. AMENDMENT. Section 61-08-26 of the North Dakota Century Code is amended and reenacted as follows:

61-08-26. County treasurer to be custodian of funds. The county treasurer shall act as the custodian of sinking funds, or funds created for the payment of bonds ~~or improvement warrants~~, except that in case an irrigation district is located in more than one county the board ~~of directors of the district~~, by recorded resolution, shall designate the county treasurer who shall act as the custodian of ~~such the~~ funds. Upon the adoption of ~~such the~~ resolution, the county treasurer so designated shall act as ~~such the~~ custodian. A copy of ~~such the~~ resolution and a copy of each and every contract, trust agreement, or trust indenture relating to the issuance and payment of bonds; ~~or improvement warrants~~; shall must be filed with ~~such the~~ county treasurer.

SECTION 15. AMENDMENT. Section 61-08-27 of the North Dakota Century Code is amended and reenacted as follows:

61-08-27. District treasurer to remit moneys to county treasurer - Crediting proper fund. The district treasurer shall remit to the county treasurer all moneys received by the treasurer in payment of assessments levied for sinking funds or for the payment of bonds ~~and improvement warrants~~. The district treasurer also shall remit to the county treasurer moneys raised from water rentals or water charges, when directed to do so by the board, and the district treasurer shall designate the fund or funds to which ~~such the~~ moneys belong, except that all moneys, from whatever source derived, obligated under the terms of any contract, or agreement made and entered into by the district, to meet payments as they become due ~~thereunder~~, shall be paid and remitted to ~~such the~~ county treasurer and shall be credited by the county treasurer to the proper fund.

SECTION 16. AMENDMENT. Section 61-08-28 of the North Dakota Century Code is amended and reenacted as follows:

61-08-28. Payment of bonds and warrants due - Redemption of bonds and warrants - Notice of redemption - Contents - Bids - Opening interest. ~~Upon the presentation to the~~ The county treasurer of bonds or improvement warrants or the coupons of either, then due and payable, the county treasurer shall pay the same shall pay the principal of, premium, if any, and interest on the bonds upon maturity, redemption, or purchase in the open market from any moneys in the fund created for the payment thereof. ~~Whenever the fund created for the payment of any series of bonds or improvement warrants shall amount to ten thousand dollars, the board shall direct the county treasurer to pay such an amount of such bonds, or improvement warrants, not due, at the lowest value at which they may be offered for redemption, except that no bond or improvement warrant shall be redeemed at a rate above par. Notice of such proposed redemption shall be advertised at least once in the official newspaper of the county in which the custodian of sinking funds is county treasurer, and in any other newspaper which the board of directors may designate. Such notice shall state that sealed proposals will be received for the redemption of such bonds or improvement warrants at the time and place therein stated. Such proposals shall be opened by the board in open meeting and the lowest bid must be accepted. In case the bids are equal, the lowest numbered bonds or improvement warrants, as the case may be, shall have the preference. If no bonds, or improvement warrants, are presented for redemption, the county treasurer, with the approval and consent of the board of directors, shall invest such money in bonds of the United States or in bonds or warrants of the state of North Dakota. The county treasurer may disburse moneys in the fund to the fiscal agent or trustee appointed by the board for the purpose of paying the principal of, premium, if any,~~

and interest on the bonds for which the fund was created, without any authorization from the board.

SECTION 17. AMENDMENT. Section 61-08-29 of the North Dakota Century Code is amended and reenacted as follows:

61-08-29. Claims paid by district treasurer - Insufficient funds - Verification of claims. No claim, other than payments of principal of, premium, if any, or interest on bonds, shall be paid by the district treasurer until the same shall have claim has been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary. If ~~such~~ the treasurer ~~has not~~ does not have sufficient money on hand to pay ~~such~~ a warrant when it is presented for payment, the treasurer shall endorse thereon "Not paid for want of funds" and ~~endorse thereon~~ the date when so presented, over the treasurer's signature. All claims against the district ~~shall~~ must be certified the same as claims filed against a county. The board may require any claim to be verified. The secretary of the district may administer ~~oaths~~ an oath to the person verifying ~~such~~ a claim.

SECTION 18. AMENDMENT. Section 61-08-34 of the North Dakota Century Code is amended and reenacted as follows:

61-08-34. Refunding irrigation district bonds - Negotiating new bonds. Each irrigation district in this state that has ~~heretofore~~ issued or shall ~~hereafter~~ issue bonds or improvement warrants purporting to have been issued for any purpose authorized by law, which bonds or improvement warrants have been ~~actually~~ sold and delivered to purchasers for value and constitute an existing indebtedness, may at any time after ~~maturity~~ or before maturity; ~~with the consent of the holder,~~ refund the same and issue and negotiate new sell refunding bonds for the amount of such indebtedness or any part thereof in amounts, bearing interest at rates, and maturing on dates as determined by the board.

SECTION 19. AMENDMENT. Section 61-08-35 of the North Dakota Century Code is amended and reenacted as follows:

61-08-35. Procedure used in issuing refunding bonds. When in the judgment of the board of directors of an irrigation district it ~~shall be to~~ is in the best interests of ~~such~~ the irrigation district to issue its negotiable bonds in the name of such irrigation district for the purpose of refunding or paying outstanding ~~bonded~~ indebtedness; ~~or any issue of bonded indebtedness of such irrigation district,~~ as enumerated provided in section 61-08-34, refunding bonds may be issued pursuant to resolutions duly passed at a regular or special meeting of ~~such~~ the board of directors. Such The refunding bonds may be sold at public or private sale and must be signed in the same manner as the bonds to be refunded or by ~~such~~ the officers of the irrigation district ~~issuing the same~~ as may be designated in the resolutions providing for their issuance.

SECTION 20. AMENDMENT. Section 61-08-39 of the North Dakota Century Code is amended and reenacted as follows:

61-08-39. Assessments - Proceeds - Levy. All assessments made by an irrigation district for the payment of the bonds or improvement warrants to be refunded ~~shall~~ must inure to the benefit of the holders of the refunding bonds and the proceeds of ~~such~~ the assessments ~~shall~~ must be utilized for the purpose of paying the interest and principal of ~~said~~ the refunding bonds, and the board of directors of the irrigation district shall levy an assessment against the lands of the district, as provided by law for levying assessments, sufficient to pay the interest on ~~such~~ the

refunding bonds and to create a sinking fund to retire ~~such~~ the refunding bonds at maturity.

SECTION 21. Two new sections to chapter 61-08 of the North Dakota Century Code are created and enacted as follows:

Issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any revenue producing facility, and the issuance of revenue bonds in anticipation of the collection of the revenues of the facility, may be authorized by resolution adopted by the affirmative vote of a majority of the board of directors. The amount of the bonds authorized may not exceed the amount authorized by the electors of the district as provided in this chapter.

Payment and security for revenue bonds. Revenue bonds issued under this chapter may not be payable from nor charged upon any funds other than the revenue pledged to the payment of the bonds, nor is the district issuing the bonds subject to any pecuniary liability on the bonds. A holder of the bonds does not have the right to compel the levy of special assessments to pay the bonds or the interest, or to enforce payment of the bonds against any property of the district other than property pledged as security for the bonds. Each revenue bond issued under this chapter must recite in substance that the bond, including interest on the bond, is payable solely from the revenue pledged to the payment of the bond, and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

SECTION 22. AMENDMENT. Section 61-09-13 of the North Dakota Century Code is amended and reenacted as follows:

61-09-13. Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations. If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause funds raised through the collection of ~~such~~ the assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works ~~therein~~ of the district, the board may borrow additional funds needed to an amount not to exceed ~~one dollar~~ twenty dollars per acre [.40 hectare] for the irrigable lands within the district and may pledge the credit of the district for the payment of the ~~same loan~~, or the board may issue ~~and register warrants~~ bonds in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay ~~such~~ the loan or to retire ~~such warrants~~ the bonds.

SECTION 23. AMENDMENT. Section 61-09-14 of the North Dakota Century Code is amended and reenacted as follows:

61-09-14. ~~Warrants~~ Borrowing in excess of ninety percent of levy prohibited - Additional levy permissible - Transfer of balance in fund. ~~No~~ An irrigation district, on account of expenses of operation and maintenance and to pay the current expenses of the district, in any year ~~shall issue warrants~~ may not borrow in excess of ninety percent of the levy of assessments for ~~such~~ that year. In case of due and outstanding obligations of the district on account of current expenses and expenses of operation and maintenance contracted ~~prior to~~ before the year in which the levy is made, the district board ~~shall have power to~~ may make an additional levy, not to exceed ~~one dollar~~ twenty dollars per acre [.40 hectare], upon all irrigable lands within the district, to create a special fund for the payment of ~~such~~ the past due obligations. Whenever the claims or obligations against any fund for any year are

fully paid, the board ~~shall have the power to~~ may transfer any unused balance to any fund for any preceding or succeeding year.

SECTION 24. REPEAL. Sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18, 61-08-19, 61-08-20, 61-08-21, 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota Century Code are repealed.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 519

SENATE BILL NO. 2080

(Natural Resources Committee)
(At the request of the State Engineer)

EMERGENCY DAM PERMITS

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to issuing temporary permits for dikes, dams, or other devices in cases of emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 acre-feet [15418.52 cubic meters] of water ~~shall~~ 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, ~~shall~~ must be presented first to the state engineer. 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 acre-feet [15418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, ~~shall be~~ is liable for all damages proximately caused by ~~such~~ the dam, dike, or other device, and ~~shall be~~ is guilty of a class B misdemeanor.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 520

HOUSE BILL NO. 1086

(Representatives Jacobs, Kempenich, Kerzman, Martin)
(Senators Urlacher, Krauter)

SOUTHWEST WATER AUTHORITY EXPENDITURES

AN ACT to amend and reenact section 61-24.5-14 of the North Dakota Century Code, relating to expenditures by the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-14 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements. The treasurer of each county in which a mill levy has been certified shall collect the taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be made approved by the board of directors ~~upon vouchers signed by the chairman of the board.~~

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 521

HOUSE BILL NO. 1058

(Legislative Council)
(Government Organization Committee)

STATE WATER POLLUTION CONTROL BOARD

AN ACT to amend and reenact sections 20.1-13-05, 61-28-02, 61-28-03, 61-28-05, and 61-28-07 of the North Dakota Century Code, relating to the powers, procedures, and composition of the state water pollution control board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-05. Equipment - Penalty.

1. Every vessel must have aboard:
4. ~~to 3.~~ Repealed by S.L. 1975, ch. 214, § 16.
4. a. If equipped with a marine toilet or other similar device for the disposition of sewage or other wastes, only that type of marine toilet equipped with a treatment device meeting standards established by the state water pollution control board. The ~~board~~ department of health shall furnish a list of the types of treatment devices currently available and considered acceptable for use with marine toilets under this ~~subsection~~ subdivision. No person owning or operating a vessel upon the waters of this state may use, operate, or permit the use or operation of any marine toilet or similar device unless it is approved under this ~~subsection~~ subdivision. No person may discharge into the waters of this state, directly or indirectly from a vessel, any untreated sewage or other wastes. No container of untreated sewage or other wastes may be placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard, or pollute such waters.
5. b. Such additional equipment designed to promote the safety of navigation and of persons as the game and fish department may find appropriate and for which it has provided in its rules ~~and regulations~~.
6. 2. No person may operate or give permission for the operation of a vessel ~~which that~~ which that is not equipped as required by this section ~~or modification thereof~~.
7. 3. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 2. AMENDMENT. Section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

61-28-02. Definitions. For the purposes of As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section unless the context otherwise requires:

1. "Board" means the state water pollution control board.
2. "Department" means the state department of health.
3. "Discharge" means the addition of any waste to state waters from any point source.
4. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems.
5. "Person" ~~means the state or any agency or institution thereof, includes any municipality, political subdivision, public or private corporation, limited liability company, individual, partnership, association, any agency or instrumentality of the United States government, or other public or private entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation such entity.~~ includes any municipality, political subdivision, public or private corporation, limited liability company, individual, partnership, association, any agency or instrumentality of the United States government, or other public or private entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation such entity.
6. "Point source" means any discernible, confined, and discrete conveyance, including; ~~but not limited to;~~ any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which wastes are or may be discharged.
7. "Pollution" means the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state.
8. "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
9. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
10. "Wastes" means all substances which cause or tend to cause pollution of any waters of the state, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.
11. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters ~~which that~~ do not combine or effect a junction with natural surface or underground waters just defined.

SECTION 3. AMENDMENT. Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

61-28-03. State water pollution prevention agency - Board.

1. There is hereby created and established a The state water pollution control board. ~~The board shall consist~~ consists of ~~ten~~ thirteen persons. ~~It shall~~ The board must include the ~~heads of the departments of state health officer, water conservation state engineer, director of the game and fish department, the state geologist, and six citizen~~ nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government. Municipal, industrial, and wildlife interests shall each be represented by a citizen member. Agricultural interests shall be represented by three citizen members. The executive secretary of the board shall be the chief sanitary engineer of the department.
2. Of the ~~six~~ nine members appointed by the governor, each shall serve six-year terms; ~~except that of those four first appointed, two shall be appointed for three years, and two shall be for six years.~~ The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.
3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. ~~Such~~ That person, if any, ~~designated pursuant to this section,~~ shall have the powers and be subject to the duties and responsibilities of the appointing office.
4. All members of the board shall serve without compensation for their duties, but ~~shall~~ must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement ~~shall~~ must be paid out of funds allocated to the department for water pollution control.
5. The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.
6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members the chairman shall call a special meeting. Seven members constitute a quorum.

7. The board shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the board. The board shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

SECTION 4. AMENDMENT. Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

61-28-05. Rules; ~~regulations~~, and standards. The department may adopt rules ~~and regulations~~ and, jointly with the ~~state water pollution control~~ board, shall hold public hearings ~~to consider~~ regarding the adoption, amendment, or repeal of rules; ~~regulations~~, and standards of quality of the waters of the state as provided in this chapter; ~~and notice of such public hearing or hearings shall be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least ten days prior to said hearing and which hearing shall be held in the state capitol in Bismarek, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards, and the state water pollution control board shall consider any other matters related to the purposes of this chapter and shall advise the department concerning the administration of this chapter.~~

SECTION 5. 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:

1. ~~Issuance~~ issuance or modification of rules ~~and regulations~~, including emergency orders relating to control of water pollution; or
2. ~~Determining~~ for determining compliance with or violation with the provisions of this chapter, or adoption of any rule; ~~regulation~~, or order issued thereunder under this chapter by the department;

~~shall, must~~ be conducted in accordance with ~~the provisions of~~ chapter 28-32 ~~and any.~~ Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule; ~~regulation~~, or order issued under this chapter may request a hearing by the department. There ~~shall be~~ 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 ~~may~~, without further notice or hearing, may issue an order reciting the existence of ~~such~~ the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding ~~any provision of~~ this chapter, ~~such~~ the order ~~shall be~~ is effective immediately. Any person to whom ~~such~~ the order is directed shall comply ~~therewith~~ immediately, but on application to the department ~~shall~~ must be afforded a hearing before the department ~~and the state water pollution control board~~ within ten days. On the basis of ~~such~~ that hearing, the emergency orders ~~shall~~ must be continued, modified,

or revoked within thirty days after ~~such~~ 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 ~~such~~ the endangerment to welfare is to the livelihood of ~~such~~ those persons, 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 ~~such~~ the pollution, or to take such other action as may be necessary.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 522

SENATE BILL NO. 2362

(Senators Heitkamp, G. Nelson, Wogsland)
(Representative Dorso)

DRINKING WATER TREATMENT REVOLVING LOAN FUND

AN ACT to create and enact two new sections to chapter 61-28.1 of the North Dakota Century Code, relating to a drinking water treatment revolving loan fund; to amend and reenact section 61-28.1-03 and subsections 2 and 3 of section 61-28.1-10 of the North Dakota Century Code, relating to the powers and duties of the state department of health; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

61-28.1-03. Powers and duties of department. The department may exercise the following powers and shall have the following duties:

1. Administer and enforce a safe drinking water program pursuant to the provisions of this chapter.
2. Provide technical assistance on request to ~~municipalities~~ public water systems of the state and other persons, and cooperate with appropriate federal agencies.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial process.
5. Maintain an inventory of public water systems within the state, which inventory may consist of such information as the department deems necessary.
6. Conduct sanitary surveys of public water systems within the state.
7. Adopt rules and regulations relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and recordkeeping which the department determines are necessary to protect public health and welfare.
8. Adopt rules and regulations relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.

9. Require the submission of plans, specifications, and such other information as it deems necessary.
10. Establish a plan for the provision of safe drinking water under emergency circumstances.
11. Require each supplier of water to keep such records and make such reports to the department as it may deem necessary.
12. Establish a schedule of fees that may be charged by the department for laboratory tests conducted at the request of any supplier of water; such fees shall be deposited in the general fund.
13. Require any supplier of water to notify the users of such public water system of any violations of any provision of this chapter, any regulation, the terms or conditions of any approval, any variance or exemption, or any order issued by the department.
14. Request and accept grants of funds or services from any federal or state agency, or any other source, public or private, and to administer such grants in accordance with any terms or conditions thereof. Any such grants received shall be used only for the purposes for which they are made.
15. Designate the state department of health as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.
16. Ensure that all new public water systems, excluding those that principally provide service to transients, commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to comply with all rules adopted under this chapter which are in effect, or will be in effect, on the date of commencement of operations.
17. Develop and implement a strategy to assist all public water systems in acquiring and maintaining technical, managerial, and financial capability to comply with all rules adopted under this chapter.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 61-28.1-10 of the North Dakota Century Code are amended and reenacted as follows:

2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ten thousand dollars per day of violation or an administrative penalty as follows:
 - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
 - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.
3. Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed

five thousand dollars per day of violation or an administrative penalty as follows:

- a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
- b. An amount adequate to ensure compliance in the case of any system not under subdivision a.

SECTION 3. A new section to chapter 61-28.1 of the North Dakota Century Code is created and enacted as follows:

Drinking water treatment revolving loan fund - Purposes - Establishment. To coordinate funding for public water systems in North Dakota, there is established a drinking water treatment revolving loan fund to be administered by the department. The loan fund is also authorized under section 1452(a) of the federal Safe Drinking Water Act, as amended. Grants from the federal government or its agencies, including the United States environmental protection agency, allotted to the state for the capitalization of the drinking water treatment revolving loan fund, and required state matching funds must be deposited in the drinking water treatment revolving loan fund in compliance with the terms of the grants. The principal of the grants must be available in perpetuity for providing financial assistance as allowed under the Safe Drinking Water Act. To the extent amounts in the revolving loan fund are not required for current obligations or expenditures, these amounts must be invested in interest-bearing obligations.

SECTION 4. A new section to chapter 61-28.1 of the North Dakota Century Code is created and enacted as follows:

Department - Powers and duties - Administration. The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guaranties, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
 - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the North Dakota municipal bond bank if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.

- e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
 - f. To earn interest before the disbursement of financial or technical assistance.
 - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
2. To administer the drinking water treatment revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
3. To administer and disburse funds with the approval of the state water commission and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, after consulting with and obtaining the approval of the state water commission.
5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 523

HOUSE BILL NO. 1102 (Representative DeKrey)

DRAINAGE PERMITS

AN ACT to amend and reenact section 61-32-03 of the North Dakota Century Code, relating to drainage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-32-03 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - Penalty. Any person, before draining ~~water from~~ a pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, ~~or~~ lake, or sheetwater for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, ~~water of~~ a pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction. ~~When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.~~ As used in this section, sheetwater means shallow water that floods land not normally subject to standing water. The state engineer may adopt rules for temporary permits for emergency drainage.

Approved March 10, 1997
Filed March 10, 1997

CHAPTER 524

SENATE BILL NO. 2239

(Senators Fischer, G. Nelson, Robinson)
(Representatives Olson, Soukup)

DEVILS LAKE OUTLET MANAGEMENT ADVISORY COMMITTEE

AN ACT to provide for creation of a Devils Lake outlet management advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Devils Lake outlet management advisory committee - Members - Terms - Vacancies. The Devils Lake outlet management advisory committee consists of the state engineer or the state engineer's designee, one member appointed by the Red River joint water resource board, one member appointed by the Devils Lake joint water resource board, one county commissioner from Ramsey County appointed by the Ramsey County board of county commissioners, one county commissioner from Benson County appointed by the Benson County board of county commissioners, a representative of the Spirit Lake Nation appointed by the tribal council of the Spirit Lake Nation, and three members appointed by the governor. The members appointed by the governor must represent the interests affected by downstream impacts of operating an outlet to Devils Lake. An appointed member may designate a substitute to serve in that person's capacity at such meetings that person may be unable to attend. Except for the first term, all appointed members serve for a term of four years or until their successors are appointed and qualified. For the first term, two of the members from the Devils Lake basin must serve two-year terms and two of the other appointed members must serve two-year terms, provided that at least one member representing the interests affected by downstream impacts of operating an outlet to Devils Lake must remain on the committee for a four-year term. The chairman shall hold the first meeting within two months after the effective date of this Act. Terms expire on the first day of July. Each appointed member must be a qualified elector of the state and is subject to removal by judicial procedure. A vacancy must be filled in the same manner as original appointments for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointed member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

SECTION 2. Chairman - Quorum - Meetings. The state engineer is the chairman of the committee. A majority of the members of the committee constitutes a quorum. The committee may hold meetings at the call of the chairman or at the request of three members of the committee at such times and places as the chairman provides.

³ **SECTION 3. Compensation and expenses.** Each member appointed by the governor is entitled to receive the same compensation per day and must be

³ Section 61-36-03 was also amended by section 36 of Senate Bill No. 2052, chapter 432.

reimbursed for expenses, while attending meetings of the committee, in the same amounts as provided for in section 54-35-10 for members of the legislative council.

SECTION 4. Development of an annual operating plan. The committee shall develop an annual operating plan for the operation of the Devils Lake outlet. The plan must specify the lake elevation at which pumping will take place. In developing the annual operating plan, the committee shall consider spring runoff forecasts, weather forecasts, summer flooding potential, downstream impacts including water quality and streambank erosion, flooding, and any other factors the committee determines should be considered. The committee must recommend a plan of operation to the state water commission within two weeks following the first official numeric national weather service spring snowmelt flood outlook. If a majority of members are unable to agree on a plan, one or more minority plans may be submitted to the state water commission. The state water commission may approve, recommend changes, or make changes to the annual operating plan.

Approved April 2, 1997

Filed April 3, 1997