

WATERS

CHAPTER 478

HOUSE BILL NO. 1206

(Representatives Schmidt, Devlin, Kasper, Pollert, Skarphol, Streyle, Thoreson)
(Senators Bowman, Lyson)

AN ACT to create and enact section 61-02-01.3 of the North Dakota Century Code, relating to development of a comprehensive water development plan; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-02-01.3 of the North Dakota Century Code is created and enacted as follows:

61-02-01.3. Comprehensive water development plan.

Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, in order to facilitate local project sponsor participation and project prioritization and to assist in project cost-benefit analysis for projects expected to cost more than five hundred thousand dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - WATER PROJECT PRIORITIZATION. During the 2013-2014 interim, the legislative management shall conduct a study to evaluate current water project prioritization processes for effectiveness in determining high-priority water projects for state water commission funding. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

Approved April 10, 2013
Filed April 10, 2013

CHAPTER 479

HOUSE BILL NO. 1067

(Judiciary Committee)
(At the request of the State Water Commission)

AN ACT to amend and reenact section 61-02-09 of the North Dakota Century Code, relating to the state water commission acting as a public corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-09 of the North Dakota Century Code is amended and reenacted as follows:

61-02-09. Commission a ~~public corporation~~ state agency - Function as state.

The commission shall be a ~~public corporation~~ state agency with all of the powers and authority possessed by such a ~~corporation~~ state agency in the performance of its duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted with, ~~in its corporate name~~. The commission in the exercise of all its powers and in the performance of all its duties shall be the state of North Dakota functioning in its sovereign and governmental capacity.

Approved April 8, 2013
Filed April 8, 2013

CHAPTER 480

HOUSE BILL NO. 1061

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

AN ACT to amend and reenact sections 61-03-23, 61-04-27, and 61-04-30 of the North Dakota Century Code, relating to water rights; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-03-23 of the North Dakota Century Code is amended and reenacted as follows:

61-03-23. Penalties - Civil.

In addition to criminal sanctions that may be imposed pursuant to law, a person who knowingly violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed ~~five~~twenty-five thousand dollars for each day the violation occurred and continues to occur and may be required by the state engineer to forfeit any right to the use of water. The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state engineer through an administrative hearing under chapter 28-32.

If a civil penalty levied by the state engineer after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state engineer for enforcement of the order.

SECTION 2. AMENDMENT. Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

61-04-27. Information filed with state engineer - Installation of measuring devices.

On or before the ~~first~~thirty-first day of ~~February~~March of each year all persons holding a water permit, ~~including irrigation districts, federal agencies, and political subdivisions,~~ shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such persons to install measuring devices, which must conform to the state engineer's specifications, at all points specified by the state engineer.

SECTION 3. AMENDMENT. Section 61-04-30 of the North Dakota Century Code is amended and reenacted as follows:

61-04-30. Penalty.

A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; who violates an order of the state engineer; who fails or refuses to install meters, gauges, or other measuring devices or to control works; who violates an order establishing corrective controls for an area or for a source of water; who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued. The state engineer shall inform the tax commissioner of violations of industrial use permits.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2013
Filed April 24, 2013

CHAPTER 481

HOUSE BILL NO. 1063

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

AN ACT to amend and reenact section 61-02-01 of the North Dakota Century Code, relating to the term nonnavigable; and to repeal sections 61-15-01, 61-15-02, and 61-15-08 of the North Dakota Century Code, relating to water conservation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-01 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01. Water conservation, flood control, management, and development declared a public purpose.

It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation, management, development, and control of waters in this state, public or private, navigable or ~~unnavigable~~nonnavigable, surface or subsurface, the control of floods, and the management of the atmospheric resources, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

SECTION 2. REPEAL. Sections 61-15-01, 61-15-02, and 61-15-08 of the North Dakota Century Code are repealed.

Approved April 26, 2013
Filed April 26, 2013

CHAPTER 482

SENATE BILL NO. 2199

(Senators G. Lee, Burckhard, Luick, Dotzenrod)
(Representatives Hofstad, Kreun)

AN ACT to amend and reenact sections 61-16.1-02, 61-16.1-40.1, 61-16.1-45, 61-16.1-51, 61-16.1-53, 61-21-46, 61-21-47, and 61-32-07 of the North Dakota Century Code, relating to drainage projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.
3. "Commission" means the state water commission.
4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
5. "Costs of the frivolous complaint" means all reasonable costs associated with the requisite proceedings regarding the removal of obstructions to a drain, removal of a noncomplying dike or dam, or closing a noncomplying drain, including all reasonable construction costs; all reasonable attorney's fees and legal expenses; all reasonable engineering fees, including investigation and determination costs; compliance inspections; and necessary technical memorandum and deficiency review; and all costs associated with any hearing conducted by a district, including preparation and issuance of any findings of fact and any final closure order.
6. "District" means a water resource district.
6. "~~Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.~~

7. "Frivolous" means allegations and denials in any complaint filed with a district made without reasonable cause and not in good faith.
8. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
- 8-9. "Water resource board" means the water resource district's board of managers.

SECTION 2. AMENDMENT. Section 61-16.1-40.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established.

With regard to projects constructed by a federal agency, including the soil conservation service or natural resources conservation service, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed ~~two~~^{four} dollars per acre [.40 hectare] annually on agricultural lands and may not exceed two dollars annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members. If a board that undertakes a project finds that the project may benefit lands in this state outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located. The board of each water resource district containing lands benefited by a project must approve the project and assessment by vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by vote of two-thirds of its members. If a project and assessment is not approved by all affected water resource boards and boards of county commissioners, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are jointly addressed. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside of the district. Before an assessment may be levied under this section, a public hearing must be held. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

SECTION 3. AMENDMENT. Section 61-16.1-45 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-45. Maintenance of drainage projects.

1. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the

maintenance may not exceed ~~two~~four dollars per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:

- 1-~~a~~. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of ~~two~~four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full ~~one dollar~~four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
- 2-~~b~~. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed ~~one dollar~~two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years.
3. If the cost of, or obligation for, the cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

SECTION 4. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition.

1. If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments

authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

2. For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain.
3. Following removal of an obstruction to a drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

²¹⁴ **SECTION 5. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction.

1. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the

²¹⁴ Section 61-16.1-53 was also amended by section 1 of House Bill No. 1062, chapter 484.

same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant.

2. Following removal of an unauthorized dike, dam, or other device, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

SECTION 6. AMENDMENT. Section 61-21-46 of the North Dakota Century Code is amended and reenacted as follows:

61-21-46. Maximum levy - Accumulation of fund.

1. The levy in any year for cleaning out and repairing a drain may not exceed ~~two~~four dollars per acre [.40 hectare] on any agricultural lands in the drainage district.
 - 1-a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of ~~two~~four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full ~~two~~four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
 - 2-b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed ~~one dollar~~two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

SECTION 7. AMENDMENT. Section 61-21-47 of the North Dakota Century Code is amended and reenacted as follows:

61-21-47. Expenditures in excess of maximum levy.

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of ~~two~~^{four} dollars per acre [.40 hectare] in any year, with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

²¹⁵ **SECTION 8. AMENDMENT.** Section 61-32-07 of the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints.

1. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. ~~If, after the first complaint, in the opinion of the board, the a complaint is frivolous in the discretion of the board,~~ the board may assess the costs of the frivolous complaint against the complainant.

²¹⁵ Section 61-32-07 was also amended by section 3 of House Bill No. 1062, chapter 484.

2. Following the closing or filling of an unauthorized drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

Approved April 10, 2013
Filed April 10, 2013

CHAPTER 483

SENATE BILL NO. 2052

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

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to a permit to construct or modify a dam, dike, or other device.

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 fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. If the board fails to respond within forty-five days, it shall be determined the board has no changes, conditions, or modifications. 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 fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

Approved March 18, 2013
Filed March 18, 2013

CHAPTER 484

HOUSE BILL NO. 1062

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

AN ACT to amend and reenact sections 61-16.1-53, 61-16.1-53.1, 61-32-07, and 61-32-08 of the North Dakota Century Code, relating to appeals of removal or closing of a noncomplying dam, dike, or other device and drains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁶ **SECTION 1. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or, dam, or other device - Notice and hearing - Appeal - Injunction.

Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dike, dam, or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to an appeal.

²¹⁶ Section 61-16.1-53 was also amended by section 5 of Senate Bill No. 2199, chapter 482.

SECTION 2. AMENDMENT. Section 61-16.1-53.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.

The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by ~~registered~~certified mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer. The state engineer, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

1. Notify the landowner by ~~registered~~certified mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the dam, dike, or other device is not removed within such reasonable time as the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the property of the responsible landowner. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment

against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the dam, dike, or other device removed within such reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

~~The authority granted in this section may only be exercised for dams, dikes, or other devices constructed after August 1, 1999.~~

²¹⁷ **SECTION 3. AMENDMENT.** Section 61-32-07 of the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints.

Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by ~~registered~~^{certified} mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the

²¹⁷ Section 61-32-07 was also amended by section 8 of Senate Bill No. 2199, chapter 482.

board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.~~ If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

SECTION 4. AMENDMENT. Section 61-32-08 of the North Dakota Century Code is amended and reenacted as follows:

61-32-08. Appeal of board decisions - State engineer review - Closing of noncomplying drains.

The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to the nonappealing party. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file such complaint with the state engineer. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination.

If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:

1. Notify the landowner by ~~registered~~certified mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or

3. Forward the drainage complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the state engineer shall determine, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, against the property of the landowner responsible. The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section shall be a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report shall be forwarded to the board and it shall include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within such reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

~~The authority granted in this section may only be exercised for drainage constructed after January 1, 1987.~~

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 485

SENATE BILL NO. 2053

(Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to create and enact a new section to chapter 61-24.6 of the North Dakota Century Code, relating to the sale of property owned by the state water commission obtained for construction of the northwest area water supply project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Commission has authority to sell property.

If the commission determines property acquired for the northwest area water supply project is no longer necessary for project purposes and the unnecessary parcel is five contiguous acres [2.03 hectares] or less, sections 54-01-05.2 and 54-01-05.5 do not apply. The commission shall have the authority to sell, transfer, or exchange the unnecessary parcel to the current owner of the parent parcel from which the unnecessary parcel was taken. If the parent parcel's current owner does not accept the commission's offer within sixty days, the commission may offer the property to any other adjacent property owner for a period of sixty days. If no offers are accepted within sixty days, the property sale will be governed by sections 54-01-05.2 and 54-01-05.5.

Approved March 18, 2013
Filed March 18, 2013

CHAPTER 486

SENATE BILL NO. 2049

(Legislative Management)
(Water-Related Topics Overview Committee)

AN ACT to amend and reenact sections 54-35-02.7 and 61-06-21, subsection 13 of section 61-07-03, and sections 61-24.8-09 and 61-24.8-10 of the North Dakota Century Code and section 4 of chapter 496 of the 2011 Session Laws, relating to the water topics overview committee, irrigation districts, irrigation project financing, and the expiration date of Garrison Diversion Conservancy District irrigation special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. (Effective through November 30, 2013) Water-related Water topics overview committee - Duties.

The legislative management, during each interim, shall appoint a ~~water-related~~water topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of ~~water-related~~water topics and related matters, ~~the Garrison diversion project~~, and for any necessary discussions with adjacent states on ~~water-related~~water topics. ~~During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.~~

~~(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.~~

SECTION 2. AMENDMENT. Section 61-06-21 of the North Dakota Century Code is amended and reenacted as follows:

61-06-21. Meetings of board - Regular and special - Quorum - Records of board.

The board shall hold regular meetings in its office or usual place of meeting in January, March, July, and November of each year. The board by rule or bylaw authorized by section 61-07-03 shall fix dates for such regular meetings and may also fix dates for additional regular meetings as it shall deem needed. The board also may hold special meetings as may be required for the transaction of the district's business.

²¹⁸ Section 54-35-02.7 was also amended by section 17 of House Bill No. 1020, chapter 20, and section 3 of Senate Bill No. 2233, chapter 490.

~~A majority of the members of the board constitutes a quorum for the transaction of business. Special meetings shall be called by the secretary upon the order of the chairman of the board or upon the request in writing of two members. The order must be entered of record on the minutes of the meeting and notice of such special meeting shall be delivered or mailed to each member of the board at least five days prior to the date of such special meeting. A special meeting of the board may be called at any time by the chairman without notice and the meeting thus called shall be legal and valid if all members of the board of directors are present. A majority of the members of the board shall constitute a quorum for the transaction of business, but upon all questions requiring a vote there shall be a~~ concurrence of at least a majority of the board is necessary on any question requiring a vote. All records of the board must be open to the inspection of any elector during business hours.

SECTION 3. AMENDMENT. Subsection 13 of section 61-07-03 of the North Dakota Century Code is amended and reenacted as follows:

13. Enter into contracts and leases as the board determines appropriate with the Garrison Diversion Conservancy District; the water commission of North Dakota; or with the United States of America, its instrumentalities, departments, or agencies, for the purpose of financing the construction of any irrigation works authorized by law, and in such contracts and leases may authorize ~~such~~the Garrison Diversion Conservancy District; the commission; or the United States, its instrumentalities, departments, or agencies, as the case may be, to supervise and approve the construction, maintenance, and operation of such irrigation works, or any part or portion thereof, until such times as any money expended, advanced, or loaned by the commission or by the United States, its instrumentalities, departments, or agencies, and agreed to be repaid thereto by said board, shall have been repaid fully. The board may accept cooperation from ~~such~~the Garrison Diversion Conservancy District; the commission; or from the United States, its instrumentalities, departments, and agencies, in the construction, maintenance, and operation, and in financing the construction of any work authorized by the board. The board shall have full power to do any and all things necessary to avail itself of such aid, assistance, and cooperation under existing or future state laws or federal legislation enacted by the Congress of the United States.

SECTION 4. AMENDMENT. Section 61-24.8-09 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-09. (Effective through July 31, 2013) Engineer's report required - Contents.

After a special improvement district has been created, the board, if the board determines it necessary to make any of the improvement set out in section 61-24.8-05 in the manner provided in this chapter, shall direct the engineer for the district, or ~~some other competent~~another registered professional engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way and other costs specified in section 61-24.8-19 and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

SECTION 5. AMENDMENT. Section 61-24.8-10 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-10. (Effective through July 31, 2013) Approval of plans, specifications, and estimates.

After receiving the engineer's report required by section 61-24.8-09, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be certified by a registered professional engineer and must be approved by a resolution of the board.

SECTION 6. AMENDMENT. Section 4 of Chapter 496 of the 2011 Session Laws is amended and reenacted as follows:

SECTION 4. EXPIRATION DATE. ~~This~~Sections 2 and 3 of this Act ~~is~~are effective through July 31, ~~2013~~2015, and after that date ~~is~~are ineffective except for projects for which all steps up to and including approval as described in section 61-24.8-14 are completed before August 1, ~~2013~~2015.

Approved March 18, 2013
Filed March 18, 2013

CHAPTER 487

SENATE BILL NO. 2308

(Senators Bowman, Luick, Lyson)
(Representatives Hatlestad, Wall, Williams)

AN ACT to create and enact four new subsections to section 61-28-02 and a new section to chapter 61-28 of the North Dakota Century Code, relating to the regulation of septic system servicing; to amend and reenact subsection 4 of section 61-28-08 of the North Dakota Century Code, relating to civil penalties for violating chapter 61-28 of the North Dakota Century Code; to repeal chapter 23-19 of the North Dakota Century Code, relating to the regulation of cesspools, septic tanks, and privies; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁹ **SECTION 1.** A new subsection to section 61-28-02 of the North Dakota Century Code is created and enacted as follows:

"Septage" means the liquid or solid material removed from septic systems, cesspools, privies, chemical toilets, holding tanks, and similar devices that receive domestic wastewater.

²²⁰ **SECTION 2.** A new subsection to section 61-28-02 of the North Dakota Century Code is created and enacted as follows:

"Septic system" means a disposal system, and all of its components, used to receive, treat, and dispose of domestic wastewater through microbiological decomposition and soil absorption.

²²¹ **SECTION 3.** A new subsection to section 61-28-02 of the North Dakota Century Code is created and enacted as follows:

"Septic system servicer" means a person that engages in the business of servicing septic systems, cesspools, privies, chemical toilets, holding tanks, and similar devices that receive domestic wastewater.

²¹⁹ Section 61-28-02 was also amended by section 2 of Senate Bill No. 2308, chapter 487, section 3 of Senate Bill No. 2308, chapter 487, and section 4 of Senate Bill No. 2308, chapter 487.

²²⁰ Section 61-28-02 was also amended by section 1 of Senate Bill No. 2308, chapter 487, section 3 of Senate Bill No. 2308, chapter 487, and section 4 of Senate Bill No. 2308, chapter 487.

²²¹ Section 61-28-02 was also amended by section 1 of Senate Bill No. 2308, chapter 487, section 2 of Senate Bill No. 2308, chapter 487, and section 4 of Senate Bill No. 2308, chapter 487.

²²² **SECTION 4.** A new subsection to section 61-28-02 of the North Dakota Century Code is created and enacted as follows:

"Service" or "servicing" means cleaning septic systems, cesspools, privies, chemical toilets, holding tanks, and similar devices that receive domestic wastewater; removing septage from these devices; transporting septage; or disposing septage by applying it to land or otherwise.

SECTION 5. A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

Septic system servicing - Permit required - Inspection authority - Fees.

1. A person engaging in the business of servicing septic systems must have a permit issued by the department and must comply with the conditions imposed by the permit.
2. The department shall administer and enforce a permitting program for septic system servicers and has the following powers and duties:
 - a. To require training of and to examine septic system servicers and their employees;
 - b. To establish standards and procedures for permitting of septic system servicers;
 - c. To issue permits to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew permits, and to suspend or revoke permits for cause after notice and opportunity for hearing;
 - d. To establish reasonable fees for permitting septic system servicers;
 - e. To establish criteria for the sanitary management of septage, including standards for the transportation, treatment, and disposal of septage;
 - f. To require preapproval of land application sites;
 - g. To require recordkeeping and reporting;
 - h. To require spill reporting, corrective action, and evidence of financial responsibility; and
 - i. To adopt and enforce rules as necessary for implementation of this section.
3. In adopting its rules the department shall apply different standards based on the size of the septic system servicer, on the type of the service provided, quantity of septage handled, and number of units. The department may not require preapproval of a land application site for an application from a rural single-family residence on property owned or leased by the owner or lessee of the single-family residence.

²²² Section 61-28-02 was also amended by section 1 of Senate Bill No. 2308, chapter 487, section 2 of Senate Bill No. 2308, chapter 487, and section 3 of Senate Bill No. 2308, chapter 487.

4. The department may inspect all septic system servicing activities, including records, equipment, and disposal sites at all reasonable times to ensure compliance with the laws of this state. Nothing in this section removes the duty of any person to comply with applicable public health standards.

SECTION 6. AMENDMENT. Subsection 4 of section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

4. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ~~five~~twelve thousand ~~five~~hundred dollars per day per violation.

SECTION 7. REPEAL. Chapter 23-19 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. This Act becomes effective January 1, 2014.

Approved April 15, 2013

Filed April 16, 2013

CHAPTER 488

HOUSE BILL NO. 1440

(Representatives Kreun, Haak, Hofstad, D. Johnson, Looysen, Maragos, Streyle)
(Senators Andrist, Grabinger, Larsen)

AN ACT to create and enact sections 61-35-26.1, 61-35-26.2, 61-35-26.3, and 61-35-26.4 of the North Dakota Century Code, relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-35-26.1 of the North Dakota Century Code is created and enacted as follows:

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

SECTION 2. Section 61-35-26.2 of the North Dakota Century Code is created and enacted as follows:

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

SECTION 3. Section 61-35-26.3 of the North Dakota Century Code is created and enacted as follows:

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

SECTION 4. Section 61-35-26.4 of the North Dakota Century Code is created and enacted as follows:

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.

2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;
 - g. Outstanding debt attributable to current users;
 - h. The impact on future revenues lost from existing and future customers;

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- i. Whether development would have occurred without annexation; and
 - j. Any other factor determined to be relevant by the administrative law judge.

Approved April 24, 2013
Filed April 24, 2013

CHAPTER 489

HOUSE BILL NO. 1060

(Energy and Natural Resources Committee)
(At the request of the State Water Commission)

AN ACT to amend and reenact sections 61-36-01, 61-36-02, and 61-36-04 of the North Dakota Century Code, relating to the composition and duties of the Devils Lake outlets management advisory committee; and to repeal section 61-36-03 of the North Dakota Century Code, relating to compensation and expenses of the Devils Lake outlet management advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-36-01 of the North Dakota Century Code is amended and reenacted as follows:

61-36-01. Devils Lake ~~outlet~~outlets management advisory committee - Members - Terms - Vacancies.

1. ~~The Devils Lake ~~outlet~~outlets 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 member appointed by the upper Sheyenne River 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 August 1, 1997.;~~

- a. The governor or governor's designee;
- b. A representative from Benson County appointed by the governor;
- c. A representative from Ramsey County appointed by the governor;
- d. A representative from Towner County appointed by the governor;
- e. A representative from Nelson County appointed by the governor;

- f. A representative from the Devils Lake joint water resource board appointed by the governor;
 - g. A representative from the Spirit Lake Nation appointed by the governor;
 - h. A representative from the city of Devils Lake appointed by the governor;
 - i. A representative from Barnes County appointed by the governor;
 - j. A representative from Valley City appointed by the governor;
 - k. A representative from Lisbon or Fort Ransom appointed by the governor;
 - l. A representative from Fargo appointed by the governor;
 - m. A representative from Grand Forks appointed by the governor;
 - n. The governor of Minnesota or a designee appointed by the governor of Minnesota;
 - o. The premier of Manitoba or the premier's designee; and
 - p. A member of the house and a member of the senate, one representing the Devils Lake basin region and one representing the downstream region, appointed by the chairman of the legislative management.
2. All appointed members serve for a term of four years or until their successors are appointed and qualified.
 3. ~~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.~~
 4. The terms of appointed members must be staggered by lot so that at least three of the terms expire each year.
 5. Members of the committee may be reappointed for additional terms and except for the legislative members, serve at the pleasure of the governor.
 6. ~~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. AMENDMENT. Section 61-36-02 of the North Dakota Century Code is amended and reenacted as follows:

61-36-02. Chairman - Quorum - Meetings.

~~The state engineer or governor or governor's designee is the chairman of the committee. A majority of the members of the committee constitutes a quorum. The committee may shall hold meetings at the call of the chairman or at the request of three members before initial operation of the committee outlets, and at such other times and places as the chairman provides deems necessary.~~

SECTION 3. AMENDMENT. Section 61-36-04 of the North Dakota Century Code is amended and reenacted as follows:

61-36-04. Development of an annual operating planDuties of the committee.

~~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 advise the governor and the state water commission regarding operations of all Devils Lake outlets. The committee may recommend criteria for operation of each outlet based on outflow volumes, water quality considerations, and the risk of an overflow of Devils Lake. Any recommendations developed by the committee must receive support from ten of the seventeen members of the committee before submission to the governor or state water commission. Any recommendation not receiving majority support but receiving support from at least five members may be submitted as a minority recommendation.~~

SECTION 4. REPEAL. Section 61-36-03 of the North Dakota Century Code is repealed.

Approved April 10, 2013
Filed April 10, 2013

CHAPTER 490

SENATE BILL NO. 2233

(Senators Grindberg, Wardner, Heckaman)
(Representatives Carlson, Hofstad, Onstad)

AN ACT to provide a declaration of water policy and goals and objectives for water project development, the Mouse River enhanced flood control project, the lower Heart River Morton County enhanced flood control project, the southwest pipeline project, the Garrison diversion unit, and the Fargo-Moorhead flood control project; to create and enact a new subdivision to subsection 2 of section 28-32-01, a new subdivision to subsection 1 of section 54-10-14, a new section to chapter 61-02, and four new sections to chapter 61-40 of the North Dakota Century Code, relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, and franchise protection rights of the western area water supply authority; to amend and reenact sections 54-35-02.7, 61-24.7-01, 61-24.7-05, 61-40-01, 61-40-02, 61-40-03, 61-40-04, 61-40-05, and 61-40-09 of the North Dakota Century Code, relating to jurisdiction of the water-related topics overview committee, the Red River valley water supply project, the location of industrial water depots, and the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects; to provide a continuing appropriation; to provide a statement of legislative intent; and to provide for reports to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to approving or setting water rates under chapter 61-40.

²²³ **SECTION 2.** A new subdivision to subsection 1 of section 54-10-14 of the North Dakota Century Code is created and enacted as follows:

Western area water supply authority industrial water sales on an annual basis.

²²⁴ **SECTION 3. AMENDMENT.** Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

²²³ Section 54-10-14 was also amended by section 1 of Senate Bill No. 2246, chapter 403.

²²⁴ Section 54-35-02.7 was also amended by section 17 of House Bill No. 1020, chapter 20, and section 1 of Senate Bill No. 2049, chapter 486.

~~54-35-02.7. (Effective through November 30, 2013) Water-related topics overview committee - Duties.~~

~~The legislative management, during each interim, shall appoint a water-related topics overview committee in the same manner as the legislative management appoints other interim committees. The committee must meet quarterly and is responsible for legislative overview of water-related topics and related matters, the Garrison diversion project, and for any necessary discussions with adjacent states on water-related topics. During the 2011-12 interim, the committee shall review the state's irrigation laws and rules and evaluate the process of the prioritization of water projects. The committee shall work collaboratively with the state water commission to develop policies to further define the state role in major flood control projects and in the prioritization of water projects. During the 2013-14 interim, the committee shall review water supply routes and alternatives for the Red River valley water supply project. The committee consists of thirteen members and the legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.~~

~~(Effective after November 30, 2013) Garrison diversion overview. The legislative management is responsible for legislative overview of the Garrison diversion project and related matters and for any necessary discussions with adjacent states on water-related topics.~~

SECTION 4.

Declaration of policy.

The legislative assembly declares that major water development and water management goals must be set forth and implemented in order to protect the long-term interests, economic vitality, and future benefits of the state and its citizens; that such water development and water management goals are essential for the economic growth and quality of life across the entire state; that rights to the use and enjoyment of waters of the Missouri River flowing through this state cannot be restricted by the federal government; that it is necessary to develop and utilize waters of the Missouri River for municipal, domestic, rural, and industrial purposes in this state; that flood control works are necessary to protect the lives and property of the citizens of this state; that major flood control works in and around major cities and other cities are necessary to address the record and damaging floods that have occurred; that regional water supply and rural water projects must be completed in order to provide a long-term, dependable quality and adequate quantity water supply for municipal, domestic, rural, and industrial uses; that irrigation provides a significant opportunity to further the agricultural opportunities in the state; and that an infrastructure loan fund will enable these goals and policies to be achieved and implemented, and will provide significant economic and financial benefits to the people of this state.

SECTION 5.

Legislative intent - Reports to legislative assembly.

The legislative assembly declares and establishes the following goals and objectives:

1. That it is necessary for the long-term welfare and economic well-being of the Souris River basin, and the entire state and its citizens, that the planning,

- design, and construction of the Mouse River enhanced flood control project be completed and implemented.
2. That the Red River valley water supply project is critical to provide a dependable water supply for current and future generations in eastern North Dakota and is essential to provide for the long-term welfare, economic well-being, and quality of life for the entire state.
 3. That it is necessary for the long-term welfare and economic well-being of the Red River basin, and the entire state and its citizens, that the planning, design, and construction of the Fargo-Moorhead flood control project be completed and implemented.
 4. That regional water supply and rural water systems are necessary to provide a dependable and adequate quantity and quality water supply for municipal, domestic, rural, and industrial uses.
 5. That the state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; mill levies; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.
 6. That the state water commission and the Garrison Diversion Conservancy District shall enter discussions with the bureau of reclamation concerning Garrison diversion unit facilities.
 7. That projects receiving state funds for construction and implementation not assert, claim, or seek to prevent other opportunities, either public or private, to utilize waters of the Missouri River for industrial uses in this state.
 8. That local water management and flood control projects are necessary for the economic well-being and quality of life of citizens in those local areas.
 9. That irrigation development offers significant opportunities for agriculture in this state.
 10. That an infrastructure loan fund for water development and management will provide significant financial benefits to projects and the citizens of this state, and will provide new capabilities to implement necessary water infrastructure projects across the state.

SECTION 6.

Mouse River enhanced flood control project.

1. The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost of constructing the Mouse River enhanced flood control project.
2. Any funds appropriated for the construction of the Mouse River enhanced flood control project may be carried over to future bienniums.

3. State funding for the Mouse River enhanced flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Mouse River enhanced flood control project.

SECTION 7.

Lower Heart River, Morton County, enhanced flood control project.

The legislative assembly declares its intent to provide state funding for a share of the nonfederal or local cost for construction of the lower Heart River, Morton County, flood control project.

SECTION 8.

Southwest pipeline project - Report to legislative assembly.

The state water commission and the southwest water authority shall begin the process of reviewing capital repayment and revenues being returned to the resources trust fund; payments necessary to meet obligations of existing bonds and other loans; ownership of land and associated facilities; existing construction documents; liabilities; contracts with cities, bulk users, companies, and other users; and other items, and shall report to the legislative assembly those steps necessary for the transfer of ownership and responsibility of the southwest pipeline project from the state water commission to the southwest water authority.

SECTION 9.

Garrison diversion unit.

The Garrison diversion unit has extensive federal facilities that have been constructed. It is the intent of the legislative assembly that the state water commission and Garrison Diversion Conservancy District begin discussions with the bureau of reclamation concerning the Garrison diversion unit facilities.

SECTION 10.

Fargo-Moorhead flood control project.

1. The sixty-third legislative assembly declares its intent to provide state funding not to exceed four hundred fifty million dollars for one-half of the nonfederal or local cost of constructing a federally authorized Fargo-Moorhead flood control project.
2. Notwithstanding any other law, any funds appropriated for the construction of the Fargo-Moorhead flood control project may be carried over to future bienniums.
3. State funding for the Fargo-Moorhead flood control project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Fargo-Moorhead flood control project.

SECTION 11. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Infrastructure revolving loan fund - Continuing appropriation - Rules.

1. An infrastructure revolving loan fund is established on January 1, 2015, within the resources trust fund to provide loans for water supply, flood protection, or other water development and water management projects. Ten percent of oil extraction moneys deposited in the resources trust fund are made available on a continuing basis for making loans in accordance with this section. Accounts may be established in the resources trust fund as necessary for its management and administration.
2. The commission shall consider the following information when evaluating projects:
 - a. A description of the nature and purposes of the proposed infrastructure project, including an explanation of the need for the project, the reasons why it is in the public interest, and the overall economic impact of the project.
 - b. The estimated cost of the project and the amount of the loan sought and other proposed sources of funding.
 - c. The extent to which completion of the project will provide a benefit to the state or regions within the state.
3. The commission shall approve projects and loans from the infrastructure loan fund, and the Bank of North Dakota shall manage and administer loans from the infrastructure loan fund and individual accounts in the fund. The commission may adopt policies for the review and approval of loans under this section. Loans made under this section must be made at an interest rate of one and one-half percent.
4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
5. Projects not eligible for the state revolving fund will be given priority for these funds.

SECTION 12. AMENDMENT. Section 61-24.7-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.7-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state 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 Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission provide a one-third share of the cost of constructing the Red River valley water supply project.
2. ~~In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to~~

~~provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.~~

- ~~3. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.~~

SECTION 13. AMENDMENT. Section 61-24.7-05 of the North Dakota Century Code is amended and reenacted as follows:

61-24.7-05. State funding plan.

1. The legislative assembly declares its intent to provide state funding for ~~one-third a share~~ of the ~~total~~ nonfederal or local cost of constructing the Red River valley water supply project.
2. Any ~~general~~ funds appropriated for the construction of the Red River valley water supply project may be carried over to future bienniums.
3. State funding for the Red River valley water supply project may be appropriated at the time and in the manner determined by the legislative assembly, either concurrently or separately from federal and local funding for the Red River valley water supply project.

SECTION 14. AMENDMENT. Section 61-40-01 of the North Dakota Century Code is amended and reenacted as follows:

61-40-01. Legislative declarations - Authority of western area water supply authority.

The legislative assembly declares that many areas and localities in western North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in western North Dakota do not have sufficient quantities of water to ensure a dependable, long-term domestic or industrial water supply; that greater economic security and the protection of health and property benefits the land, natural resources, 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 treat, store, and distribute water to western North Dakota be established to provide for the supply and distribution of water to the people of western North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, oil and gas development, and other uses, and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of western North Dakota, by the creation and development of a western area water supply project for beneficial and public uses. The western area water supply authority may acquire, construct, improve, develop, and own water supply infrastructure and may enter water supply contracts with member cities, water districts, and private users, such as oil and gas producers, for the sale of water for use within or outside the authority boundaries or the state. The western area water supply authority shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers. The independent water providers shall consider in the process of locating industrial water depots the location of private water sellers so as to minimize the impact on private water sellers.

SECTION 15. AMENDMENT. Section 61-40-02 of the North Dakota Century Code is amended and reenacted as follows:

61-40-02. Western area water supply authority.

The western area water supply authority consists of participating political subdivisions located within McKenzie, Williams, Burke, Divide, and Mountrail Counties which enter a water supply contract with the authority. Other cities and water systems, within or outside the authority counties' boundaries, including cities or water systems in Montana, may contract with the authority for a bulk water supply. The authority is a political subdivision of the state, a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter, or which may be reasonably implied. Participating member entities may be required to pay dues or water sale income to the authority, as determined by the bylaws and future resolutions of the authority. Participating member entities may not withdraw from the authority or fail or refuse to pay any water sale income to the authority ~~if the twenty five million dollar zero interest loan from the state water commission has not been repaid until the state-guaranteed loans have been repaid.~~ The provisions of subsections 1 through 5 of section 61-35-02.1 apply if the authority's board of directors unanimously votes to convert to a water district.

SECTION 16. AMENDMENT. Section 61-40-03 of the North Dakota Century Code is amended and reenacted as follows:

61-40-03. Western area water supply authority - Board of directors.

1. The initial board of directors of the western area water supply authority consists of two representatives from each of the following entities: Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&T water supply association. The governing body of each member entity shall select two representatives to the authority board who are water users of the member entity. If a vacancy arises for a member entity, the governing body of the member entity shall select a new representative to act on its behalf on the authority board. ~~In addition, the state engineer or designee is a voting member on the authority's board of directors.~~ Directors have a term of one year and may be reappointed.
2. Additional political subdivisions or water systems may be given membership on the board upon two-thirds majority vote of the existing board. To be eligible for membership on the board, the member entity must first contract with the authority for financial participation in the project.
3. A member entity may designate an alternate representative to attend meetings and to act on the member's behalf. The board may designate associate members who are nonvoting members of the board. Notwithstanding this section, ~~except for the state engineer or designee,~~ initial board members must be removed if they have not entered a contract with the authority, before August 1, 2013, for financial participation in the project.

SECTION 17. AMENDMENT. Section 61-40-04 of the North Dakota Century Code is amended and reenacted as follows:

61-40-04. Board of directors - Officers - Meetings.

1. The board of directors shall adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time

and place of regular meetings of the board, financial participation structure for membership in the authority, and membership appointment and changes. Bylaws need to be approved by member entity boards.

2. The board shall elect from its members a chairman and a vice chairman. The board shall elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing.
3. Board members are entitled to receive as compensation an amount determined by the board not to exceed the amount per day provided members of the legislative management under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.
4. ~~The initial board bylaws must direct board voting protocol. A weighted voting structure for board members is acceptable if the voting is based upon the volume of water purchased, the financial contributions of the stakeholder entities, or any other formula agreed by a majority of the board.~~
5. ~~Before the bylaws become effective, the bylaws must be reviewed and approved by the attorney general.~~

SECTION 18. AMENDMENT. Section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

61-40-05. Authority of the western area water supply authority.

In addition to authority declared under section 61-40-01, the board of directors of the western area water supply authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 or as described in this chapter for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority. However, if the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county in which the right of way is located, may take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of

court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

3. Accept funds, property, services, pledges of security, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority. The authority may cooperate and contract with the state or federal government, or any department or agency of state or federal government, or any city, water district, or water system within the authority, in furnishing assurances and meeting local cooperation requirements of any project involving treatment, control, conservation, distribution, and use of water.
4. Cooperate and contract with the agencies or political subdivisions of this state or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of employees as the board determines necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to authority members and others within or outside the territorial boundaries of the authority and this state.
7. Hold, own, sell, or exchange any and all property purchased or acquired by the authority. All money received from any sale or exchange of property must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter contracts to obtain a supply of bulk water through the purchase of infrastructure, bulk water sale or lease, which contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water supply or infrastructure.
9. Acquire, construct, improve, and own water supply infrastructure, office and maintenance space in phases, in any location, and at any time.
10. Enter contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority. The contracts may provide for payments to fund some or all of the authority's costs of acquiring, constructing, or reconstructing one or more water system projects, as well as the authority's costs of operating and maintaining one or more projects, whether the acquisition, construction, or reconstruction of any water supply project actually is completed and whether water actually is delivered pursuant to the contracts. The contracts the cities, water districts, and other entities that are members of the western area water supply authority are authorized to execute are without limitation on the term of years.
11. Borrow money as provided in this chapter.
12. 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 obligations, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any contract or instrument.

13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrial commission and the emergency commission.
14. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness, and provide for payment of debts and expenses of the authority.
15. Operate and manage the authority to distribute water to any out-of-state cities or water systems that contract with the authority.
16. Accept, apply for, and hold water allocation permits.
17. Adopt rules concerning the planning, management, operation, maintenance, sale, and ratesetting regarding water sold by the authority. The authority may adopt a rate structure with elevated rates set for project industrial water depot and lateral supplies in recognition that a large component of the project expense is being incurred to meet the demands of industrial users. The industrial water depot and lateral rate structure must be approved in accordance with section 20 of this Act.
18. Develop water supply systems; store and transport water; and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes; milling, manufacturing, mining, industrial, metallurgical, and any and all other beneficial uses; and fix the terms and rates therefore. The authority may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all treatment plants, works, facilities, improvements, and property necessary the same without any required public vote before taking action.
19. Contract to purchase or improve water supply infrastructure or to obtain bulk water supplies without requiring any vote of the public on the projects or contracts. In relation to the initial construction of the system and for the purposes of entering a contract with the authority, municipalities are exempt from the public voting requirements or water contract duration limitations otherwise imposed by section 40-33-16.
20. Accept assignment by member entities of contracts that obligate member entities to provide a water supply, contracts that relate to construction of water system infrastructure, or other member entity contracts that relate to authorities transferred to the authority under this chapter.

SECTION 19. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Industrial water depot and lateral sales.

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the industrial commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
 - a. One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this Act.
 - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
 - c. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
 - d. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
 - e. Additional principal payment on state-guaranteed loans.
 - f. Payment to the resources trust fund.
2. If the state-guaranteed loans have not been repaid, without the written consent of the industrial commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
3. The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after the effective date of this Act.

SECTION 20. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Water rates.

The authority shall develop an industrial water depot and lateral retail rate and present the rate to the industrial commission for approval. Any industrial water depot

and lateral rate adjustment must have approval of the industrial commission before going into effect. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 19 of this Act which are paid for by industrial water depot and lateral sales.

SECTION 21. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Construction funding.

The authority shall follow the state water commission requirements for funding through the resources trust fund or Bank of North Dakota state-guaranteed loans and shall present the overall plan and project components to the state water commission for funding approval. Priority on project funding first is reserved for state-guaranteed loan payments if not met by industrial water depot and lateral sales, second is for full repayment of existing federal debt if 7 U.S.C. 1926(b) protection for oil and gas exploration and production industrial water sales is asserted, and third for expanding domestic water supply to areas currently not served. In accepting construction funding, the authority and participating member entities agree to not hinder or prevent depot and lateral industrial water sales for oil and gas exploration and production.

SECTION 22. AMENDMENT. Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

61-40-09. Default.

~~If the authority is in default in the payment of the principal of or interest on any of the obligations of the authority under this chapter and if the budget section determines that the authority is unable to reimburse the state in the time period required by the budget section, the budget section may give written notice to the governing board of the authority that the state has taken possession and ownership of the water system of the authority and the liabilities of the authority. In addition, the state assumes the powers of the authority. The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 19 of this Act, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal of or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due. Upon written notice, the members of the governing board of the authority are immediately removed, and the state water commission is the governing board from the date of notice. If the state water commission determines that governance, possession, and ownership of the water system is not necessary for the authority to be able to reimburse the state in the necessary time period, the state water commission may develop a plan to return governance, possession, and ownership to the authority, subject to approval of the plan by the budget section.~~

SECTION 23. A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

Franchise protection.

Notwithstanding any other provision of law, neither the authority nor its participating member entities may be required to waive the right to assert franchise protection under state or federal law with regard to water used for purposes other than industrial sales for oil and gas exploration and production.

SECTION 24. REPEAL. Sections 61-24.7-02, 61-24.7-03, 61-24.7-04, and 61-40-06 of the North Dakota Century Code are repealed.

SECTION 25. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly that after all loans to the state of North Dakota and contractual responsibilities to participating members are fulfilled, that any revenues generated by industrial water-related sales for oil and gas exploration and production be prioritized for use for infrastructure development in oil and gas-impacted areas of the state.

SECTION 26. REPORTS TO THE LEGISLATIVE MANAGEMENT. The independent water providers and the western area water supply authority shall report to the water-related topics overview committee on a regular basis and collaborate with the committee and the state water commission to monitor water usage, rates, and market share. The water-related topics overview committee shall report to the legislative management with recommendations to assure the state's ability to maintain its payment schedule. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

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