

WATERS

CHAPTER 419

HOUSE BILL NO. 1374

(Representatives Schmidt, D. Anderson, J. Nelson, Sanford, Streytle, Zubke)
(Senators Bekkedahl, Kreun, G. Lee, Luick, Schaible, Sorvaag)

AN ACT to create and enact sections 61-02-14.3, 61-02-80, 61-02-81, and a new section to chapter 61-03 of the North Dakota Century Code, relating to contracts and financial assistance for water projects and duties of the state engineer; and to amend and reenact sections 61-02-01.3, 61-02-01.4, 61-02-02, 61-02-04, 61-02-07, and 61-02-08, subsection 1 of section 61-02-14, and subsection 4 of section 61-02-62 of the North Dakota Century Code, relating to definitions of types of financial assistance for water projects and the composition and operation of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-01.3 of the North Dakota Century Code is amended and reenacted 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~~education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects expected to cost more than ~~five hundred thousand~~one million dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the upper Red River, lower Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.

SECTION 2. AMENDMENT. Section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

61-02-01.4. State water commission cost-share policy.

~~The state water commission shall adopt a cost-share policy for the financing of water projects. The policy review, gather stakeholder input on, and rewrite as necessary the commission's "Cost-share Policy, Procedure and General Requirements" and "Project Prioritization Guidance" documents. The commission's cost-share policy:~~

1. Must provide a water supply project is eligible for grants~~a cost-share~~ up to seventy-five percent of the total eligible project costs.

2. May not determine program eligibility of water supply projects based on a population growth factor. However, a population growth factor may be used in prioritizing projects for that purpose.
3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense and regular maintenance, including removal of vegetative materials and sediment, for water conveyance projects and may exclude operations expense and regular maintenance for other projects. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.
4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

²⁰⁶ **SECTION 3. AMENDMENT.** Section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

61-02-02. Definitions.

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

1. "Commission" means the state water commission.
2. "Cost of works" includes:
 - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
 - b. The cost of all water rights acquired or exercised by the commission in connection with such works;
 - c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
 - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;
 - e. Administrative expenses;
 - f. The construction of the works and the placing of the same in operation; and
 - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.

²⁰⁶ Section 61-02-02 was also amended by section 17 of House Bill No. 1020, chapter 19.

3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
- 4-9. "Project" means any one of the works defined in subsection 5, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
- 5-10. "Water conveyance project" means any surface or subsurface drainage works, bank stabilization, or snagging and clearing of water courses.
11. "Works" includes:
 - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
 - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 4. AMENDMENT. Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

61-02-04. State water commission - Members - Terms - Qualifications.

The state water commission ~~shall consist~~consists of the governor, agriculture commissioner, and seven other members ~~to be~~ appointed by the governor who shall take into account reasonable geographic considerations in making ~~such~~the appointments with the intent of having each of the seven major drainage basins represented by a commissioner who resides in the basin. The major drainage basins are the upper Missouri River basin, the lower Missouri River basin, the James River basin, the upper Red River basin, the lower Red River basin, the Mouse River basin, and the Devils Lake basin. The governor or the agriculture commissioner, or both, may appoint a representative to serve in that official's capacity at such meetings as that official ~~may be~~is unable to attend. The seven appointive members of the commission must be appointed for a term of six years each with ~~their~~the terms of office so arranged that two terms and not more than three terms expire on the first day of July of each odd-numbered year. Each appointive member must be a qualified elector of the state and is subject to removal by judicial procedure. In case of a vacancy, the vacancy must be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

SECTION 5. AMENDMENT. Section 61-02-07 of the North Dakota Century Code is amended and reenacted as follows:

61-02-07. Quorum - What constitutes.

A majority of the members of the commission ~~shall constitute~~constitutes a quorum, and the affirmative or negative vote of five members ~~shall be~~is necessary to bind the commission except for adjournment.

²⁰⁷ **SECTION 6. AMENDMENT.** Section 61-02-08 of the North Dakota Century Code is amended and reenacted as follows:

61-02-08. Meetings of commission - Chairman and vice chairman.

The commission ~~may hold meetings at such times and~~shall hold at least one meeting every two months at such ~~places as it, by resolution, may provide.~~ The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of the governor's absence or disability, the vice chairman shall preside. The seven appointed members of the commission shall select an appointed member to serve as vice chairman of the commission.

SECTION 7. AMENDMENT. Subsection 1 of section 61-02-14 of the North Dakota Century Code is amended and reenacted as follows:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment may be necessary or advisable:
 - a. To control the low-water flow of streams in the state.

²⁰⁷ Section 61-02-08 was also amended by section 18 of House Bill No. 1020, chapter 19.

- b. To impound water for the improvement of municipal, industrial, and rural water supplies.
- c. To control and regulate floodflow in the streams of the state to minimize the damage of such floodwaters.
- d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake, or stream into another river, lake, or stream.
- e. To improve the channels of the streams for more efficient transportation of the available water in the streams.
- f. To provide sufficient water flow for the abatement of stream pollution.
- g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife conservation by the construction and maintenance of dams, reservoirs, and diversion canals.
- h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
- i. To provide more satisfactory subsurface water supplies for the municipalities of the state.
- j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgment may be necessary and advisable, except the commission may not provide a cost-share for the costs of operation or maintenance, including removal of vegetative materials and sediment, of a water conveyance project.
- k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
- l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof, and with any county, township, drainage district, or irrigation district of this state, or of other states, in the construction or improvement of such drains.
- m. To provide water for stock.
- n. To provide water for the generation of electric power and for mining and manufacturing purposes.

SECTION 8. Section 61-02-14.3 of the North Dakota Century Code is created and enacted as follows:

61-02-14.3. Commission agreements - Terms, conditions, and reapplication.

An agreement for funding which is approved by the commission to fund a water project under this chapter must require a progress report to the commission at least every four years if the term of the project exceeds four years. If a progress report is not timely received or, if after a review of a progress report, the commission determines the project has not made sufficient progress, the commission may terminate the agreement for project funding. The project sponsor may submit a new application to the commission for funding for a project for which the commission previously terminated funding.

SECTION 9. AMENDMENT. Subsection 4 of section 61-02-62 of the North Dakota Century Code is amended and reenacted as follows:

4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
 - a. To pay all costs of operation and maintenance of the works or project, as permitted under this chapter, together with necessary repairs thereto;
 - b. To meet and pay the principal and interest of all the bonds as they severally become due and payable; and
 - c. To create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of the works or project as the commission shall determine.

SECTION 10. Section 61-02-80 of the North Dakota Century Code is created and enacted as follows:

Flood control projects - Financial assistance limited.

Except for flood control projects authorized by the legislative assembly or the commission before July 1, 2017, the commission shall calculate the amount of its financial assistance, including loans, grants, cost-share, and issuance of bonds, based on the needs for protection of health, property, and enterprise, against:

1. One hundred year flood events as determined by a federal agency;
2. The national economic development alternative; or
3. The local sponsor's preferred alternative if the commission first determines the historical flood prevention costs and flood damages, and the risk of future flood prevention costs and flood damages, warrant protection to the level of the local sponsor's preferred alternative.

SECTION 11. Section 61-02-81 of the North Dakota Century Code is created and enacted as follows:

Development in breach inundation zones - No financial assistance for dam improvements.

Notwithstanding any other provision of law, if a political subdivision permits building or development within a breach inundation zone and the building or development causes a change in a dam's current hazard classification necessitating structural improvements or upgrades to the dam, the political subdivision shall pay for the necessary improvements or upgrades. State loans, grants, cost-share, and other

financial assistance may not be provided to pay for the dam improvements or upgrades. For purposes of this section, "breach inundation zone" means the area downstream of the dam which would be flooded in the event of a dam failure or uncontrolled release of water.

²⁰⁸ **SECTION 12.** A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Economic analysis process required for certain projects.

The state engineer shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than seven hundred fifty thousand dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the state engineer shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

Approved April 18, 2017

Filed April 18, 2017

²⁰⁸ Section 61-03-21.4 was amended by section 21 of House Bill No. 1020, chapter 19.

CHAPTER 420

HOUSE BILL NO. 1390

(Representatives Headland, Blum, Brandenburg, Kading)
(Senators Meyer, Rust, Wanzek)

AN ACT to amend and reenact sections 61-16-08 and 61-32-03.1 of the North Dakota Century Code, relating to water resource board members and subsurface water management system permits; to provide for a legislative management study; to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers.

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. After June 30, 1985, when the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
2. Each member of a water resource board shall receive the sum of at least seventy-five dollars but not more than one hundred thirty-five dollars per day while performing duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.
3. A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, that the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.
 - a. Installation of an artificial subsurface drainage subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
 - b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
 - c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2.
 - a. The state engineer shall develop an application form for a permit for subsurface drainage of water required under this section. A person seeking to construct an artificial subsurface drainage system a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. Water resource districts may attach any necessary conditions to an approved permit, but may not deny an application unless the water resource district determines the application is of statewide significance or the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers] of the proposed subsurface drainage. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts must shall forward copies of all approved permits to the state engineer. Water resource districts shall determine if the application proposes drainage of statewide significance. If so, the application must be referred to the state engineer for consideration and approval, and the state engineer shall make a determination within thirty days. The permit applicant shall provide a thirty-day notice to downstream property owners within one mile [1.61 kilometers] of the proposed subsurface drainage. If an investigation by a water resource district or a downstream landowner within one mile [1.61 kilometers] shows that the proposed drainage will flood or adversely affect lands of downstream landowners within one mile [1.61 kilometers], the water resource district may require flowage easements before issuing a permit. If an artificial subsurface drainage system drains into an assessment drain, natural watercourse, or pond, slough, or lake, a flowage easement is not required. Flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. A person that installs an artificial subsurface drainage system without first securing a permit to do so, as provided in this section, is liable for all damage sustained by a person caused by the draining, and is guilty of an infraction.
 - b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management

system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.

3.
 - a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.
 - b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
 - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
 - d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control

structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.

- e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
- f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the state engineer if the application meets the requirements of this section.
5. A water resource district board may not be held liable to any person for issuing a permit under this section.
6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.
7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - NUTRIENT MANAGEMENT PLAN. During the 2017-18 interim, the legislative management shall consider studying and monitoring the nutrient management plan developed by the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

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

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 421

SENATE BILL NO. 2047

(Legislative Management)
(Water Topics Overview Committee)

AN ACT to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the authority of water resource boards to exercise the power of quick take eminent domain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain ~~in the manner provided by~~ as follows:
 - a. Except as permitted under subdivision b, the board shall comply with title 32 for the purpose of acquiring and securing by eminent domain any rights, titles, interests, estates, or easements 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 dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when
 - b. (1) If the interest sought to be acquired is an easement for a right of way for any project authorized in this chapter for which federal or state funds have been appropriated made available, the district, after making a written offer to purchase the right of way and depositing may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:
 - (a) Conducting informal negotiations for not less than sixty days.
 - (b) If informal negotiations fail, the district shall engage in formal negotiations by:
 - [1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - [2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.

- [3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
- (2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.
- (3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the district may take immediate possession of the right of way, but not a blanket easement, if the district files an affidavit by the chairman of the water resource board which states the district has fulfilled the required negotiation steps and deposits the amount of the written offer with the clerk of the district court of the county wherein which the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota.
- (4) 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.
- (5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired.

Approved April 24, 2017

Filed April 25, 2017

CHAPTER 422

HOUSE BILL NO. 1055

(Representatives Zubke, Kempenich, B. Anderson, D. Anderson)
(Senator Bekkedahl)

AN ACT to amend and reenact section 61-16.1-16 of the North Dakota Century Code, relating to the aggregate total outstanding revenue bond indebtedness limit for water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-16 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-16. Revenue bonds.

Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ~~ten~~fifty million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds shall not be a general obligation of any county and shall not be secured by property taxes.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 423

HOUSE BILL NO. 1339

(Representatives Skroch, Ertelt, B. Koppelman, McWilliams, Toman, Vigesaa)
(Senators Burckhard, Luick, Osland)

AN ACT to amend and reenact sections 61-16.1-22, 61-16.1-23, and 61-16.1-26 of the North Dakota Century Code, relating to notice, appeals, and refunds of special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for ~~two~~three successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing may not be less than ~~twenty~~thirty days after the mailing of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and shall file the list in the office of the secretary.

SECTION 2. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-23. Appeal to state engineer.

After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than ~~twenty-five~~twenty percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been

made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessment is final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question is final.

SECTION 3. AMENDMENT. Section 61-16.1-26 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-26. Reassessment of benefits.

The water resource board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. ~~At least ten days' notice~~ Notice of the hearing must be given by publication once each week for three consecutive weeks, beginning at least thirty days before the hearing, in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof ~~by ordinary mail of the hearing in an envelope clearly marked "ASSESSMENT NOTICE"~~ to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer in the assessed district at the landowner's address as shown by the tax rolls of the counties in which the affected property is located. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 424

SENATE BILL NO. 2270

(Senators Wanzek, G. Lee, Sorvaag)
(Representatives Sanford, Vigesaa, Zubke)

AN ACT to amend and reenact subsection 5 of section 6-09.4-03, section 61-24-27, subsection 3 of section 61-24.8-01, and sections 61-24.8-13, 61-24.8-14, 61-24.8-16, and 61-24.8-17 of the North Dakota Century Code, relating to financing options for the Garrison Diversion Conservancy District and notice of assessments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁹ **SECTION 1. AMENDMENT.** Subsection 5 of section 06-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Political subdivision" means:
 - a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.
 - d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
 - e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].
 - f. The Garrison Diversion Conservancy District or any successor entity or improvement district created under chapter 61-24.8 to finance or refinance irrigation and water supply projects.
 - g. The Lake Agassiz water authority, for use in financing the construction, acquisition, extension, expansion, alteration, betterment, maintenance, or renovation of a project under section 61-39-16.

²⁰⁹ Section 6-09.4-03 was also amended by section 3 of Senate Bill No. 2327, chapter 199.

²¹⁰ **SECTION 2. AMENDMENT.** Section 61-24-27 of the North Dakota Century Code is amended and reenacted as follows:

61-24-27. Notes and bonds exempt from taxation.

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

SECTION 3. AMENDMENT. Subsection 3 of section 61-24.8-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness, including indebtedness owed to banks, or other public or private lending sources, of the district issued under this chapter.

SECTION 4. AMENDMENT. Section 61-24.8-13 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-13. Hearing - Notice - Contents.

1. Upon the filing of the engineer's report provided for in section 61-24.8-09, and after satisfying the requirements of section 61-24.8-10, the board shall fix a date and place for public hearing on the proposed project, except when the conditions under subsection 2 are met. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board may appoint a hearing officer or a committee of the board to conduct the hearing. The board shall cause a complete list of the benefits and assessments to be made, setting forth each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least fourteen days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notices of the hearing must contain the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the

²¹⁰ Section 61-24-27 was also amended by section 1 of Senate Bill No. 2269, chapter 427.

benefited lands are located. The date set for the hearing may not be fewer than fourteen days after the first publication of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

2. A public hearing is not required if the board:
 - a. Provides written notice to each affected landowner setting forth the probable total cost of the project, the landowner's share of the project cost, the portion of the landowner's property, if any, to be condemned for the project, and when and where votes concerning the proposed project may be filed. If the written notice is given to each affected landowner, the assessment list for the proposed project need not be filed with the county auditor of each county in which the project is located; and
 - b. Publishes notice of the project in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located at least twenty-one days before the deadline for filing votes on the project.

SECTION 5. AMENDMENT. Section 61-24.8-14 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-14. Voting on proposed projects.

At the hearing or in the written notice, the affected landowners must be informed when and where votes concerning the proposed project may be filed. Affected landowners to be assessed have thirty days after the date of the hearing or thirty days after the date of mailing the notice to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that one hundred percent of the total votes filed are for the proposed project, then the vote constitutes an affirmation of the project and the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-24.8-17 and 61-24.8-18, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in section 61-24.8-41. The board may enter any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of section 61-24.8-41. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. No publication is required if the board provides written notice of the order establishing or denying establishment of a project to each affected landowner. Any right of appeal begins to run on the date of publication or mailing of the notice.

SECTION 6. AMENDMENT. Section 61-24.8-16 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-16. Assessment of cost of project.

When the board proposes to make any special assessment under this chapter, the board or its agent, before the hearing or the mailing of written notice required under section 61-24.8-13, shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be directly benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with direct benefits received but not exceeding such benefits against any lot, piece, or parcel of land that is directly benefited by the improvement. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. There must be attached to the list of assessments a certificate signed by the chairman and certified by the secretary that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

SECTION 7. AMENDMENT. Section 61-24.8-17 of the North Dakota Century Code is amended and reenacted as follows:

61-24.8-17. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

After entering an order establishing the project, the board shall cause the assessment list to be published once each week for two successive weeks in the official county newspaper of each county in which the benefited lands are located and in local newspapers of general circulation in the area of the affected lands. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party or an agent or attorney for that party. Publication of the assessment list is not required if the board mails the assessment list and the time and place of the hearing to each affected landowner. The date set for the hearing must be not less than fourteen days after the mailing or first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land assessed. The hearing is not required if the board receives written consent from each affected landowner to the levy of assessments. The board then shall confirm the assessment list and the secretary shall attach to the list a certificate that it is correct as confirmed by the board. The list must be filed in the office of the district secretary.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2017

Filed April 19, 2017

CHAPTER 425

HOUSE BILL NO. 1160

(Representatives Brandenburg, Grueneich, Jones, Magrum, Satrom)
(Senators Bekkedahl, Erbele)

AN ACT to amend and reenact subdivision d of subsection 2 of section 61-28-04.1 of the North Dakota Century Code, relating to exempting plumbers from permit fee requirements for persons who service septic systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 2 of section 61-28-04.1 of the North Dakota Century Code is amended and reenacted as follows:

- d. To establish reasonable fees for permitting septic system servicers, however the department may not establish or charge a permit or renewal fee for a plumber licensed under chapter 43-18 who operates no more than one servicing unit;

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 426

SENATE BILL NO. 2134

(Senators Armstrong, Bekkedahl, Unruh)
(Representatives Bosch, Longmuir, Porter)

AN ACT to create and enact chapter 61-33.1 of the North Dakota Century Code, relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project dams; to provide appropriations; to provide a contingent line of credit; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 61-33.1 of the North Dakota Century Code is created and enacted as follows:

61-33.1-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Corps survey" means the last known survey conducted by the army corps of engineers in connection with the corps' determination of the amount of land acquired by the corps for the impoundment of Lake Sakakawea and Lake Oahe, as supplemented by the supplemental plats created by the branch of cadastral survey of the United States bureau of land management.
2. "Historical Missouri riverbed channel" means the Missouri riverbed channel as it existed upon the closure of the Pick-Sloan Missouri basin project dams, and extends from the Garrison Dam to the southern border of sections 33 and 34, township 153 north, range 102 west which is the approximate location of river mile marker 1,565, and from the South Dakota border to river mile marker 1,303.
3. "Segment" means the individual segment maps contained within the corps survey final project maps for the Pick-Sloan project dams.
4. "State phase two survey" means the "Ordinary High Water Mark Survey Task Order #2 Final Technical Report" commissioned by the board of university and school lands.

61-33.1-02. Mineral ownership of land inundated by Pick-Sloan Missouri basin project dams.

The state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark. The state holds no claim or title to any minerals above the ordinary high water mark of the historical Missouri riverbed channel inundated by Pick-Sloan Missouri basin project dams, except for original grant lands acquired by the state under federal law and any minerals acquired by the state through purchase, foreclosure, or other written conveyance. Mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams which are located within the exterior boundaries of the Fort Berthold reservation and

Standing Rock Indian reservation is controlled by other law and is excepted from this section.

61-33.1-03. Determination of the ordinary high water mark of the historical Missouri riverbed channel.

1. The corps survey must be considered the presumptive determination of the ordinary high water mark of the historical Missouri riverbed channel, subject only to the review process under this section and judicial review as provided in this chapter.
2. Upon the effective date of this Act, the department of mineral resources shall commence procurement to select a qualified engineering and surveying firm to conduct a review of the corps survey under this section. The review must be limited to the corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west. Within ninety days of the first date of publication of the invitation, the department shall select and approve a firm for the review. The department may not select or approve a firm that has a conflict of interest in the outcome of the review, including any firm that has participated in a survey of the Missouri riverbed for the state or a state agency, or participated as a party or expert witness in any litigation regarding an assertion by the state of mineral ownership of the Missouri riverbed.
3. The selected and approved firm shall review the delineation of the ordinary high water mark of the corps survey segments. The review must determine whether clear and convincing evidence establishes that a portion of the corps survey does not reasonably reflect the ordinary high water mark of the historical Missouri riverbed channel under state law. The following parameters, historical data, materials, and applicable state laws must be considered in the review:
 - a. Aerial photography of the historical Missouri riverbed channel existing before the closure date of the Pick-Sloan project dams;
 - b. The historical records of the army corps of engineers pertaining to the corps survey;
 - c. Army corps of engineers and United States geological survey elevation and Missouri River flow data;
 - d. State case law regarding the identification of the point at which the presence of action of the water is so continuous as to destroy the value of the land for agricultural purposes, including hay lands. Land where the high and continuous presence of water has destroyed its value for agricultural purposes, including hay land, generally must be considered within the ordinary high water mark. The value for agricultural purposes is destroyed at the level where significant, major, and substantial terrestrial vegetation ends or ceases to grow. Lands having agricultural value capable of growing crops or hay, but not merely intermittent grazing or location of cattle, generally must be considered above the ordinary high water mark; and
 - e. Subsection 3 of section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within

the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

4. The firm shall complete the review within six months of entering a contract with the department of mineral resources. The department may extend the time required to complete the review if the department deems an extension necessary.
5. Upon completion of the review, the firm shall provide its findings to the department. The findings must address each segment of the corps survey the firm reviewed and must include a recommendation to either maintain or adjust, modify, or correct the corps survey as the delineation of the ordinary high water mark for each segment. The firm may recommend an adjustment, modification, or correction to a segment of the corps survey only if clear and convincing evidence establishes the corps survey for that segment does not reasonably reflect the ordinary high water mark of the historical Missouri riverbed channel under state law.
6. The department shall publish notice of the review findings and a public hearing to be held on the findings. The public must have sixty days after publication of the notice to submit comments to the department. At the end of the sixty days, the department shall hold the public hearing on the review.
7. After the public hearing, the department, in consultation with the firm, shall consider all public comments, develop a final recommendation on each of the review findings, and deliver the final recommendations to the industrial commission, which may adopt or modify the recommendations. The industrial commission may modify a recommendation from the department only if it finds clear and convincing evidence from the resources in subsection 3 that the recommendation is substantially inaccurate. The industrial commission's action on each finding will determine the delineation of the ordinary high water mark for the segment of the river addressed by the finding.

61-33.1-04. Implementation.

1. Within six months after the adoption of the final review findings by the industrial commission:
 - a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the owners of the tracts, absent a showing of other defects affecting mineral title; and
 - b. Any royalty proceeds held by the board of university and school lands attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey must be released to the relevant operators to distribute to the owners of the tracts, absent a showing of other defects affecting mineral title.
2. Upon adoption of the final review findings by the industrial commission:

- a. The board of university and school lands shall begin to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. The board shall complete the adjustments, refunds, and payment demands within two years after the date of adoption of the final review findings.
- b. Operators of oil and gas wells affected by the final review findings immediately shall begin to implement any acreage and revenue adjustments relating to state-owned and privately owned oil and gas interests. The operators shall complete the adjustments within two years after the date of adoption of the review findings. Any applicable penalties, liability, or interest for late payment of royalties or revenues from an affected oil or gas well may not begin to accrue until the end of the two-year deadline. The filing of an action under section 61-33.1-05 tolls the deadline for any oil and gas well directly affected by the action challenging the review finding.

61-33.1-05. Actions challenging review findings.

An interested party seeking to bring an action challenging the review findings or recommendations or the industrial commission actions under this chapter shall commence an action in district court within two years of the date of adoption of the final review findings by the industrial commission. The plaintiff bringing an action under this section may challenge only the final review finding for the section or sections of land in which the plaintiff asserts an interest. The state and all owners of record of fee or leasehold estates or interests affected by the finding, recommendation, or industrial commission action challenged in the action under this section must be joined as parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high water mark of the historical Missouri riverbed channel which varies from the boundary determined under this chapter bears the burden of establishing the variance by clear and convincing evidence based on evidence of the type required to be considered by the engineering and surveying firm under subsection 3 of section 61-33.1-03. Notwithstanding any other provision of law, an action brought in district court under this section is the sole remedy for challenging the final review, recommendations, and determination of the ordinary high water mark under this chapter, and preempts any right to rehearing, reconsideration, administrative appeal, or other form of civil action provided under law.

61-33.1-06. Public domain lands.

Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting nonpatented public domain lands owned by the United States must be determined by the branch of cadastral study of the United States bureau of land management in accordance with federal law.

61-33.1-07. State engineer regulatory jurisdiction.

This chapter does not affect the authority of the state engineer to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel inundated by Pick-Sloan Missouri basin project dams.

SECTION 2. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$800,000, or so much of the sum as may be necessary, to the department of mineral resources for the purpose of contracting with a qualified engineering and surveying firm to conduct a limited review of the corps survey under this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

SECTION 3. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT LINE OF CREDIT - MINERAL REVENUE REPAYMENTS.

1. There is appropriated out of any moneys held in reserve in the strategic investment and improvements fund for mineral title disputes, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of mineral revenue repayments, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.
2. The funding provided in this section is available for the following:
 - a. Repayment of any lease, bonus, rents, and royalty collections attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey, as required in subsection 1 of section 61-33.1-04.
 - b. Repayment of any lease, bonus, rents, and royalty collections attributable to the remaining oil and gas mineral tracts, as required in subsection 2 of section 61-33.1-04.
 - c. Other mineral revenue repayments or other reimbursements that are attributable to oil and gas mineral tracts requiring repayments under this Act.
3. Upon adoption of the final review findings by the industrial commission, the commissioner of university and school lands shall calculate the amount necessary for mineral revenue repayments based on the final review findings.
4. As soon as a repayment amount for a known recipient is calculated but after the expenditure of the \$100,000,000 in subsection 1:
 - a. The commissioner of university and school lands shall request from the sixty-sixth legislative assembly additional funding sufficient for any remaining mineral revenue or other repayments.
 - b. If the \$100,000,000 is expended before the repayment of all amounts calculated for known recipients and before additional funds are made available by the sixty-sixth legislative assembly, the Bank of North Dakota shall extend a line of credit, not to exceed \$87,000,000, to the commissioner of university and school lands. The commissioner of university and school lands shall access the line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of mineral revenue and other repayments under this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The commissioner of university

and school lands shall repay the line of credit from funds available in the strategic investment and improvements fund as appropriated by the legislative assembly.

SECTION 4. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive to the date of closure of the Pick-Sloan Missouri basin project dams. The ordinary high water mark determination under this Act is retroactive and applies to all oil and gas wells spud after January 1, 2006, for purposes of oil and gas mineral and royalty ownership.

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

Approved April 21, 2017

Filed April 21, 2017

CHAPTER 427

SENATE BILL NO. 2269

(Senators Wanzek, G. Lee, Sorvaag)
(Representatives Sanford, Vigesaa, Zubke)

AN ACT to create and enact section 61-39-04.1 of the North Dakota Century Code, relating to authorization of a state Red River valley water supply project; and to amend and reenact sections 61-24-27, 61-24.7-05, 61-39-01, 61-39-02, 61-39-03, 61-39-04, 61-39-05, 61-39-11, and 61-39-16 of the North Dakota Century Code, relating to the powers of the Lake Agassiz water authority and funding for the Red River valley water supply project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹¹ **SECTION 1. AMENDMENT.** Section 61-24-27 of the North Dakota Century Code is amended and reenacted as follows:

61-24-27. Notes and bonds exempt from taxation.

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

SECTION 2. 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 a share of the ~~nonfederal or local~~ cost of constructing the Red River valley water supply project.
2. Any 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 any federal funding that

²¹¹ Section 61-24-27 was also amended by section 2 of Senate Bill No. 2270, chapter 424.

becomes available and the local funding for the Red River valley water supply project.

SECTION 3. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. Findings and declaration of policy.

The legislative assembly declares that many areas and localities in eastern and central North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern and central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern and central North Dakota be established to provide for the supply and distribution of water to the people of eastern and central North Dakota for purposes, including domestic, rural water, municipal, livestock, ~~light~~ industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern and central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state, including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

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

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern and central North Dakota or utilize other financing as addressed in this chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

SECTION 4. AMENDMENT. Section 61-39-02 of the North Dakota Century Code is amended and reenacted as follows:

61-39-02. Lake Agassiz water authority created.

The Lake Agassiz water authority consists of cities and water districts, and other water distribution systems located in that part of the state which is included within the boundaries of Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Trail,

Barnes, Cass, Ransom, Sargent, and Richland, and Stutsman Counties and that pay dues to the authority. Minnesota cities may join the authority, provided a portion of the city is located within five miles [8.05 kilometers] of this state, or if the city uses the Red River for its primary water supply. Any other county, city, water district, or Canadian governmental entity or water supply system may join the authority upon application of its board and approval of the application by a majority of the authority's board. The authority shall require any new member to pay for a pro rata share of the project costs previously incurred by the authority members. The authority also may require an entity contracting for a water supply to pay an additional fee if the entity joins the project late. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in this chapter, or which may be reasonably implied. Cities and water districts, and other water distribution systems may pay dues to the authority as determined by the authority.

SECTION 5. AMENDMENT. Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

61-39-03. Lake Agassiz water authority - Board of directors.

1. The authority must be governed by a board of directors selected as follows:
 1. a. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
 2. b. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
 3. c. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
 4. d. One member from a city with a population of less than five thousand located east of state highway 1.
 5. e. Two members from water districts located east of state highway 1 and north of state highway 200.
 6. f. Two members from water districts located east of state highway 1 and south of state highway 200.
 7. g. One member from water districts located east of state highway 1.
 8. h. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.
 - i. One member from water districts located west of state highway 1.
 - j. One member from a city west of state highway 1.
2. North Dakota city members must be selected for two-year terms by election by cities ~~located east of state highway 4~~ during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Cities that have paid dues in the calendar year the vote is taken, or signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. Water district members must be selected for two-year terms by election by water districts ~~located east~~

~~of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. Water districts that have paid dues in the calendar year the vote is taken, or have signed a development agreement or other participation agreement with the authority before the date of the election, are eligible to vote. For elections of board members after July 1, 2017, a candidate for board member must have a development agreement, water supply contract, or project participation agreement with the authority or the Garrison Diversion Conservancy District. The initial Minnesota city is Moorhead, as it is an associate member of the authority. Moorhead will serve in this capacity until the league of Minnesota cities annual conference in 2006. During even-numbered years thereafter, Minnesota cities within five miles [8.05 kilometers] of the Red River or that use the Red River as a primary water supply may elect their representative. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. ~~Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Lake Agassiz water authority or the Garrison Diversion Conservancy District.~~~~

SECTION 6. AMENDMENT. Section 61-39-04 of the North Dakota Century Code is amended and reenacted as follows:

61-39-04. Board of directors - Officers - Meetings.

The board of directors may adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board and a dues structure for membership in the authority. The bylaws may include weighted voting for board members based on nomination capacity; the existence of a development agreement, water supply agreement, or project participation agreement; or other factors the board deems relevant. The board shall elect from its members a chairman and a vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held by the same individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least ~~six~~three days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

SECTION 7. Section 61-39-04.1 of the North Dakota Century Code is created and enacted as follows:

61-39-04.1. State project authorized.

The authority and the Garrison Diversion Conservancy District shall continue studying, planning, developing, and constructing a nonfederal project to meet the

water supply needs of eastern and central North Dakota separate and apart from the federal Red River valley water supply project. The state project may include similar features as the federal project and may rely on and utilize studies, designs, and information developed as part of other water supply projects.

SECTION 8. AMENDMENT. Section 61-39-05 of the North Dakota Century Code is amended and reenacted as follows:

61-39-05. Authority of the Lake Agassiz water authority.

The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the agencies or political subdivisions of the state of North Dakota 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 such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water to its members and others within or outside the territorial boundaries of this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply projectsproject, which ~~Red River valley water supply projectsproject~~ the Garrison Diversion Conservancy District may acquire, design, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply

projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute without limitation on the term of years.

9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, designing, constructing, or reconstructing one or more features of a Red River valley water supply projectsproject, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more features of a Red River valley water supply projectsproject, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on the term of years.
10. Borrow money from any legal source, including persons listed under section 61-39-11, the public finance agency through the state revolving fund or capital financing, the drinking water state revolving fund, the resources trust fund, and other state funding programs as provided in this chapter.
11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, design, construction, reconstruction, or improvement of one or more features of a Red River valley water supply projectsproject, or any feasibility study or preliminary economic, engineering, or legal work relating to any Red River valley water supply project.
13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.

16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
17. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
18. Accept from any authorized private entity or state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter ~~into~~ agreements with the entity or agency respecting the loans or grants.
19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority and to any Canadian governmental entity or water system.
21. Require various capital construction contribution rates, and charge different water rates for bulk water purchases based on a tiered system that recognizes higher contributions and water rates for entities that need the project in a drought. Other tiers with less immediate water needs or industrial needs may be assessed costs and charges water rates in relation to the cost of incrementally increasing the size of the project to accommodate those needs or on other bases the authority determines. The authority may charge higher construction costs or water rates to out-of-state entities based on the level of state funding supporting the project. Costs and charges also may vary according to the infrastructure assigned to each entity.

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

SECTION 9. AMENDMENT. Section 61-39-11 of the North Dakota Century Code is amended and reenacted as follows:

61-39-11. Notes and bonds exempt from taxation.

Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, including the public finance authority; all national banking associations; state banks; trust companies; savings banks and institutions; savings and loan associations; investment companies; and other persons carrying on a banking business; and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their

control in any bonds issued by the authority pursuant to this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 10. AMENDMENT. Section 61-39-16 of the North Dakota Century Code is amended and reenacted as follows:

61-39-16. Project - Definition.

As used in this chapter, unless the context otherwise requires, the term "project" means either a system, plant, works, instrumentality, or property used to provide water supply in connection with the state or federal Red River valley water supply project, or a contract for the purchase of water, including a contract for the bulk purchase of water from the Garrison Diversion Conservancy District delivered by means of a state or federal Red River valley water supply project.

Approved March 29, 2017

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