

WATERS

CHAPTER 626

HOUSE BILL NO. 1159
(Kloubec)

WATER CONSERVATION COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 61-02-04 of the North Dakota Century Code to expand the membership of the state water conservation commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-04 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-04. STATE WATER CONSERVATION COMMISSION - MEMBERS - TERMS - QUALIFICATIONS. The state water conservation commission shall consist of the governor, commissioner of agriculture, and five seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor may appoint a representative to serve in his stead at such meetings as he may be unable to attend. The ~~five~~ seven appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that ~~one-term~~ two terms and not more than ~~two~~ three terms shall expire on the first day of July of each odd-numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor. Before entering upon the discharge of his official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers. The state water conservation commission may also be known and referred to as the "State Water Commission".

Approved March 16, 1981

CHAPTER 627

HOUSE BILL NO. 1540
(Vander Vorst, Berg, Jacobsen, Marsden, A. Olson)

WATER PROJECT INTERIM FINANCING NOTES

AN ACT to create and enact thirteen new sections to chapter 61-02 of the North Dakota Century Code, relating to the state water commission's authority to borrow money and issue interim notes to provide tax-exempt construction period financing for works and projects authorized in chapter 61-02; and to amend and reenact section 61-02-09 of the North Dakota Century Code, relating to the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

BORROWING ON INTERIM NOTES - EXPENSES PAID AND LOANS MADE FROM PROCEEDS - ISSUANCE OF NOTES. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes" may, unless the context demands otherwise, be used in this Act in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with tax-exempt construction period financing. Such construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

SECTION 2. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES GUARANTEED BY UNITED STATES AGENCY OR INSTRUMENTALITY - LIMITATIONS. In addition to its other powers, the commission may enter into interim financing and loan agreements with any owner or owners to loan the proceeds of the commission's interim notes to any owner or owners for works or projects authorized by this chapter anywhere within this state and to adopt the necessary resolution therefor, without regard to the limitations, provisions, or requirements of any other law, except those of this chapter.

Before any such agreement can be entered into, an agency or instrumentality of the United States government, including, but not limited to, the farmers home administration or the old west regional commission, or any agency of this state, including but not limited to, the Bank of North Dakota, must have committed itself to make a grant or loan to such owner or owners. Under this section the commission may only provide interim financing less than or equal to the federal or state grant or loan commitment on each project and may not apply the proceeds of such interim notes and financing to any purpose other than expenses allowed by section 1 of this Act and the project or works for which the loan agreement is made. Interim notes authorized by this Act shall not be considered revenue bonds under section 61-02-46, and the proceeds of any such notes shall not be part of any commission fund as enumerated in section 61-02-64, and need not be deposited in the state treasury.

SECTION 3. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - PROPER AUTHORITY REQUIRED. Before entering into any loan agreement under section 2 of this Act, the commission shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the owner or owners receiving such interim financing has the authority and power to construct the project or works, borrow these funds, and enter into the loan agreement. The commission shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been followed or properly performed.

SECTION 4. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - INDEPENDENT REVIEW OF FEASIBILITY OF PROJECT. Before issuing any interim notes pursuant to section 1 of this Act, the commission shall conduct a review of the feasibility of the project or works to ensure that projected water consumption, operating costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings.

SECTION 5. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING - PROCEEDS PLEDGED AS SECURITY - ASSIGNMENT TO STATE WATER COMMISSION OF RIGHTS TO PROCEEDS. Any interim financing agreement pursuant to section 2 of this Act shall provide that the owner or owners receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States or the state as security for the interim notes issued pursuant to the loan agreement. In addition, the execution of any interim financing agreement under section 2 of this Act shall constitute an assignment to the commission of the

right to receive the proceeds of the federal or state loan or grant so far as is necessary to secure the interim notes issued pursuant to the agreement and in preference to any other obligation whatsoever of the owner or owners receiving the interim financing. It shall not be necessary for the financing agreement, trust indentures, or any other document relating to the interim financing agreement to be filed or recorded in order for the assignment to the commission to be perfected.

SECTION 6. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

TERMS OF INTERIM NOTES - EXTENSION OF MATURITY DATES. Any resolution authorizing the issuance of interim notes shall specify the principal amount, rate of interest and maturity date, but not to exceed three years from date of issue, and such other terms as may be specified in such resolutions. The time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

SECTION 7. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

PLEDGE OF REVENUES TO SECURE INTERIM FINANCING NOTES. All interim financing notes and the interest thereon must be secured by a pledge of, and be payable from, any grant or loan to be made by an agency or instrumentality of the United States government or the state of North Dakota, as specified in section 2 of this Act, and in connection with such project or works.

SECTION 8. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

ADDITIONAL COVENANTS AND CONDITIONS TO SECURE INTERIM FINANCING NOTES. The commission, in order to further secure the payment of the interim financing notes, is authorized and empowered to make any other or additional covenants, terms and conditions, and to do and perform such acts as may be necessary, convenient, or desirable in order to secure payment of its interim financing notes, and to make the interim financing notes more acceptable to lenders. Exercise of authority pursuant to this section shall be consistent with the provisions of this chapter.

SECTION 9. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

REGISTRATION OF INTERIM FINANCING NOTES - INTEREST PAYMENT - REDEMPTION PRIOR TO MATURITY. The commission may provide for the registration of interim financing notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the commission may determine by the resolution authorizing their issue. Interest on the notes may be made payable semiannually, annually, or at maturity, however, the first interest payment period may be less than six months. The

notes may be made redeemable, prior to maturity, at the option of the commission, in the manner and upon the terms fixed by the resolution authorizing their issuance.

SECTION 10. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXECUTION AND ATTESTATION OF INTERIM FINANCING NOTES - SALE. The interim financing notes shall be executed by the chairman or the vice chairman of the commission and shall be attested by the signature of the state engineer. The signature of the chairman or vice chairman, and the state engineer, and any other signatures on appurtenant coupons, may be facsimiles. The notes shall be sold at private or public sale in such manner, at such rate of interest, and at such price as the commission shall by resolution determine.

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

BOND PROVISIONS APPLICABLE TO INTERIM FINANCING. The provisions of sections 61-02-49, 61-02-50, sections 61-02-59 through 61-02-62, inclusive, and section 61-02-65, relating to bonds shall also apply to notes issued pursuant to section 1 of this Act.

SECTION 12. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING NOTES NOT A STATE OBLIGATION - PAYMENT RESTRICTED TO REVENUES - NOTES NOT A LIEN. Interim financing notes issued by the commission under this chapter shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such notes shall be payable solely from funds pledged or available for their payment as authorized in this chapter. Such notes shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter shall recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 13. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES AS LEGAL INVESTMENTS AND SECURITY.
Notwithstanding any restrictions contained in any other law, this state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any notes issued by the state water commission pursuant to this chapter, and such notes shall be authorized security for any and all public deposits.

SECTION 14. AMENDMENT. Section 61-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-09. COMMISSION A PUBLIC CORPORATION - AGENCY OF STATE. The commission shall be a public corporation with all of the powers and authority possessed by such a corporation in the performance of its duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted with, in its corporate name. The commission in the exercise of all its powers and in the performance of all of its duties shall be ~~deemed to be an agency of~~ the state of North Dakota functioning in its sovereign and governmental capacity.

Approved March 16, 1981

CHAPTER 628

HOUSE BILL NO. 1099
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

APPEALS FROM WATER COMMISSION OR STATE ENGINEER ACTION

AN ACT to create and enact a new section to chapter 61-02 and a new section to chapter 61-03 of the North Dakota Century Code, relating to appeals from decisions of the state water conservation commission and the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEARING - APPEALS FROM DECISION OF STATE WATER CONSERVATION COMMISSION. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the commission under the provisions of this title shall have the right to a hearing by the commission and shall have the right to appeal from the decision of the commission on such hearing, all in accordance with the provisions of chapter 28-32.

SECTION 2. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEARING - APPEALS FROM DECISION OF STATE ENGINEER. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title shall have the right to a hearing by the state engineer and shall have the right to appeal from the decision of the state engineer on such hearing, all in accordance with the provisions of chapter 28-32.

Approved March 2, 1981

CHAPTER 629

HOUSE BILL NO. 1106
(Committee on Natural Resources)
(At the request of the Water Conservation Commission)

WATER USE, DEFINITIONS, AND FEES

AN ACT to amend and reenact subsections 3 and 8 of section 61-04-01.1, sections 61-04-02 and 61-04-04.1 of the North Dakota Century Code, relating to definitions, permits for beneficial use of water, and water permit application fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 8 of section 61-04-01.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, ~~whether when the water is supplied by the individual, a municipal government, or by a privately owned public utility or other agency or family unit.~~
8. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency, or entity, for primarily domestic purposes, as defined herein.

SECTION 2. AMENDMENT. Section 61-04-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-02. PERMIT FOR BENEFICIAL USE OF WATER REQUIRED. Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the state engineer unless such construction or taking from such constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses the water user shall notify the state engineer of the location and acre-feet [1233.48 cubic meters] capacity of such constructed works, dams, or dugouts. Regardless of proposed use, however, all water users shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15,418.52 cubic meters] of water or the construction of a well from which more than twelve and one-half acre-feet of water per year will be appropriated. ~~Although no water permit shall be~~ In those cases where a permit is not required of a landowner or his lessee to appropriate less than twelve and one-half acre-feet of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date; the state engineer may provide by regulation for the waiver of any fee or hearing for such applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

SECTION 3. AMENDMENT. Section 61-04-04.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-04.1. APPLICATION FEES. The following fees shall accompany an application and shall be paid by the state engineer into the general fund of the state treasury:

1. For municipal or public use in municipalities or other entities of 2500 population or over according to the latest federal census-----\$250
2. For municipal or public use in municipalities or other entities of less than 2500 population according to the latest federal census-----\$150
3. For irrigation-----\$100
4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet or less -----\$150
5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet -----\$500
6. For recreation, livestock, or fish and wildlife-----\$ 50
7. For commercial recreation -----\$100

Approved March 3, 1981

CHAPTER 630

SENATE BILL NO. 2301
(Senators Iszler, Dotzenrod, Moore)
(Representative Metz)

WATER PERMIT APPLICATION LIMITATION

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to time limitations concerning water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

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

TIME LIMITATIONS CONCERNING APPLICATIONS. An individual may not apply for a permit or permits for irrigation which, if approved, would enable the individual, at any one time, to hold a conditional permit or permits for more than seven hundred twenty acre-feet of water which has not been applied to beneficial use. Applications submitted in violation of this section shall not be assigned a priority date and shall be returned to the applicant by the state engineer. This section shall not apply to applications for water permits from the Missouri River or to applications submitted by irrigation districts organized pursuant to title 61. For the purposes of this section, an individual means any person, including his or her spouse, and dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

Approved March 31, 1981

CHAPTER 631

HOUSE BILL NO. 1372
(Representative Strinden)
(Senator Streibel)

WEATHER MODIFICATION ACTIVITY RESPONSIBILITY

AN ACT to place responsibility for administration of weather modification activities under the direction and supervision of the state water commission; to repeal chapter 2-07 of the North Dakota Century Code, relating to the weather modification board, a division of the aeronautics commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. EXTENDED STATE OWNERSHIP OF WATER SOVEREIGNTY OVER MOISTURE. In order that the state may share to the fullest extent in the benefits already gained through fundamental research and investigation on new and improved means for predicting, influencing, and controlling the weather, for the best interest, general welfare, health, and safety of all the people of the state, and to provide proper safeguards in applying the measures for use in connection therewith in order to protect life and property, it is deemed necessary and hereby declared that the state of North Dakota claims its sovereign right to use the moisture contained in the clouds and atmosphere within the state boundaries. All water derived as a result of weather modification operations shall be considered a part of North Dakota's basic water supply and all statutes, rules, and regulations applying to natural precipitation shall also apply to precipitation resulting from cloud seeding.

SECTION 2. DECLARATION OF POLICY AND PURPOSE. The legislative assembly finds that weather modification affects the public health, safety, and welfare, and that, properly conducted, weather modification operations can improve water quality and quantity, reduce losses from weather hazards, and provide economic benefits for the people of the state. Therefore, in the public interest, weather modification shall be subject to regulation and control, and research and development shall be encouraged. To minimize possible adverse effects, weather modification operations shall be carried on with proper safeguards, and accurate information shall be recorded concerning such operations and the benefits obtained therefrom by the people of the state.

SECTION 3. DEFINITIONS. As used herein, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota weather modification board which, in the exercise of the powers granted herein, shall have all of the powers of an administrative agency as defined in chapter 28-32.
2. "Controller" refers to any licensee duly authorized in this state to engage in weather modification activities.
3. "Hail suppression" refers to the activation of any process which will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.
4. "Increasing precipitation" refers to the activation of any process which will actually result in greater amounts of moisture reaching the ground in any area from a cloud or cloud system than would have occurred naturally.
5. "Initiating precipitation" refers to the process of causing precipitation from clouds that could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.
6. "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a limited geographical area or within a limited period of time.
7. "Research and development" means exploration, field experimentation, and extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production of models, devices, equipment, materials, and processes.
8. "Weather modification" means and extends to the control, alteration, and amelioration of weather elements including man-caused changes in the natural precipitation process, hail suppression or modification and alteration of other weather phenomena including clouds, temperature, wind direction and velocity, and the initiating, increasing, decreasing, and otherwise modifying by artificial methods of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding, electrification, or by other means to provide immediate practical benefits.

SECTION 4. NORTH DAKOTA WEATHER MODIFICATION BOARD - CREATED - MEMBERSHIPS. There is hereby created a North Dakota weather modification board which shall be a division of the state water commission. The board shall be composed of the director of the state aeronautics commission, a representative of the environmental

section of the state department of health, the state engineer, and one additional board member from each of seven districts established by section 5 of this Act. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to him by weather modification authorities in each district and:

1. When the term of office of any board member from any district is about to expire.
2. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less than three nor more than four terms shall expire on the first day of July of each odd-numbered year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII, shall serve for four-year terms. Thereafter, board members from each district shall serve for a four-year term of office except in the event the governor shall appoint a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. In the event any district fails to furnish a list to the governor, or if there are no weather modification authorities under this Act within a district, then the governor shall appoint a board member of his choice residing within such district.

SECTION 5. WEATHER MODIFICATION BOARD - DISTRICTS CREATED. Members of the weather modification board shall be appointed from districts containing the following counties:

- District I - Burke, Divide, McKenzie, Mountrail, and Williams;
- District II - Bottineau, McHenry, McLean, Renville, Sheridan, and Ward;
- District III - Benson, Cavalier, Eddy, Foster, Griggs, Nelson, Pierce, Ramsey, Rolette, Steele, Towner, and Wells;
- District IV - Cass, Grand Forks, Pembina, Richland, Traill, and Walsh;
- District V - Barnes, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Sargent, and Stutsman;
- District VI - Burleigh, Emmons, Grant, Mercer, Morton, Oliver, and Sioux;
- District VII - Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark.

SECTION 6. DIRECTION AND SUPERVISION BY STATE WATER COMMISSION - INDEPENDENT FUNCTIONS RETAINED BY BOARD. The powers, functions, and duties of the North Dakota weather modification board shall be administered under the direction and supervision of the North Dakota state water commission. The board shall retain the

quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the state water commission.

SECTION 7. WEATHER MODIFICATION BOARD - OFFICERS - COMPENSATION. All members of the weather modification board, with the exception of the chairman, shall be voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members shall constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state shall receive compensation in the amount provided in subsection 1 of section 54-35-10, and shall be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board shall be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in section 44-08-04 and 54-06-09.

SECTION 8. POWERS AND DUTIES OF WEATHER MODIFICATION BOARD. The board may exercise the following powers and shall have the following duties:

1. The board shall appoint an executive director to serve at its discretion, and perform such duties as assigned by the board.
2. The board shall authorize the employment of whatever staff it deems necessary to carry out the provisions of this Act. The executive director shall hire the staff, subject to the approval of the board.
3. The board shall adopt rules concerning qualifications, procedures and conditions for issuance, revocation, suspension, and modification of licenses and permits; standards and instructions governing weather modification operations, including monitoring and evaluation; recordkeeping and reporting, and the board shall establish procedures and forms for such recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this Act. The provisions of chapter 28-32 shall apply to this Act, and rules of the board shall be published in the North Dakota Administrative Code.
4. The board may contract with any person, association, partnership, or corporation, with the federal government, and with any county or groups of counties, as provided in section 20 of this Act, to carry out weather modification operations and shall, in connection with regulated weather modification operations, carry on monitoring and evaluation activities.

5. The board may order any person who is conducting weather modification operations in violation of this Act, or any rules adopted pursuant to it, to cease and desist from such operations and the order shall be enforceable in any court of competent jurisdiction within this state.
6. The board may cooperate and contract with any private person or any local, state, or national commission, organization, or agency engaged in activities similar to the work of the board and may make contracts and agreements to carry out programs consistent with the purpose and intent of this Act. The board may also, in accordance with law, request and accept any grants of funds or services from any such commission, organization, person, or agency, and expend such funds or use such services to carry out the provisions of this Act.
7. The board shall administer and enforce the provisions of this Act and do all things reasonably necessary to effectuate the purposes of this Act.

SECTION 9. WEATHER MODIFICATION BOARD TO ESTABLISH RESEARCH AND DEVELOPMENT PROGRAM. The board shall establish a program of weather modification research and development in this state. The board shall supervise and coordinate all research and development activities in the state or research and development activities outside of the state participated in or conducted by any state institution or state or county agency.

SECTION 10. REPORT TO GOVERNOR. The board shall prepare and transmit a biennial report to the governor describing the research and development activities conducted during the biennium, and the outcome thereof, and other related work and activities. The report shall be submitted in accordance with sections 54-06-03 and 54-06-04.

SECTION 11. LICENSE AND PERMIT REQUIRED. Except as provided in section 12 of this Act, no person may engage in weather modification activities without both a professional weather modification license issued under section 14 of this Act and a weather modification permit issued under section 16 of this Act. Licenses shall expire on December thirty-first of the year of issuance.

SECTION 12. EXEMPTIONS. The board may provide by rule for exemption of the following activities from the license and permit requirements of section 11 of this Act:

1. Research and development conducted by the state, political subdivisions of the state, colleges and universities of the state, agencies of the federal government, or bona fide research corporations.

2. Weather modification operations of an emergency nature taken against fire, frost, or fog.

Exempted activities shall be conducted so as not to unduly interfere with weather modification operations conducted under a permit issued in accordance with this Act.

SECTION 13. OPERATOR DEEMED TO BE DOING BUSINESS WITHIN STATE - RESIDENT AGENT. A person shall be deemed doing business within this state when engaged in weather modification operations within the boundaries of this state, and shall, if not already qualified to do business within this state under chapter 10-22, prior to conducting such operations, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 14. ISSUANCE OF LICENSE - FEE. The board shall provide, by rule, the procedure and criteria for the issuance of a license. The board, in accordance with its rules, shall issue a weather modification license to each applicant who:

1. Pays a license fee of fifty dollars.
2. Demonstrates competence to engage in weather modification operations, to the satisfaction of the board.
3. Designates an agent for the service of process pursuant to section 13 of this Act or chapter 10-22.

Each license issued by the board shall be nontransferable and shall expire on December thirty-first of the year of issuance. A license shall be revocable for cause at any time prior to such date if, after holding a hearing upon due notice, the board shall determine that cause for revocation exists. License fees collected by the board shall be paid into the general fund in the state treasury.

SECTION 15. REVOCATION OR SUSPENSION OF LICENSE. The board may suspend or revoke a license for any of the following reasons:

1. Incompetency.
2. Dishonest practice.
3. False or fraudulent representations made in obtaining a license or permit under this Act.
4. Failure to comply with any provisions of this Act, or any rules adopted by the board pursuant to this Act.

SECTION 16. PERMIT REQUIRED - ISSUANCE OF PERMIT - FEE.

1. A weather modification permit shall be required for each geographical area, as set out in the operational plan required by subdivision b of this subsection, in which a person intends to conduct weather modification operations.

Each permit issued by the board shall expire on December thirty-first of the year of issuance. A person applying for a weather modification operational permit shall file an application with the board, in such form as the board shall prescribe, which application shall be accompanied by an application fee of twenty-five dollars and contain such information as the board, by rule, may require, and in addition, each applicant for a permit shall:

- a. Furnish proof of financial responsibility as provided by section 19 of this Act.
 - b. Set forth a complete operational plan for the proposed operation which shall include a specific statement of its nature and object, a map of the proposed operating area which specifies the primary target area for the proposed operation and shows the area that is reasonably expected to be affected by such operation, a statement of the approximate time during which the operation is to be conducted, a list of the materials and methods to be used in conducting the operation, and such other detailed information as may be needed to describe the operation.
2. The board may issue the permit if it determines that:
- a. The applicant holds a valid weather modification license issued under this Act.
 - b. The applicant has furnished satisfactory proof of financial responsibility in accordance with section 19 of this Act.
 - c. The applicant has paid the required application fee.
 - d. The operation:
 - (1) Is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of this state, advance scientific knowledge, or otherwise carry out the purposes of this Act.
 - (2) Is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, welfare, or the environment.
 - (3) Will not adversely affect another operation for which a permit has been issued.
 - e. The applicant has North Dakota workmen's compensation insurance coverage for all employees working in North Dakota.

- f. The applicant has furnished a performance bond as required by section 34 of this Act.
- g. The applicant has complied with such other requirements for the issuance of permits as may be required by the rules and regulations of the board.
- h. The applicant has furnished a bid bond in accordance with section 35 of this Act.
- i. The applicant has registered, with the North Dakota aeronautics commission, any aircraft and pilots intended to be used in connection with the operation.

To carry out the objectives and purposes of this Act, the board may condition and limit permits as to primary target areas, time of the operation, materials, equipment, and methods to be used in conducting the operation, emergency shutdown procedure, emergency assistance, and such other operational requirements as may be established by the board.

3. The board shall issue only one permit at a time for operations in any geographical area if two or more operations conducted in such an area according to permit limitations might adversely interfere with one another.
4. All permit fees collected by the board shall be paid into the general fund of the state treasury.

SECTION 17. HEARINGS. The board shall give public notice, in the official county newspaper or newspapers in the area of the state reasonably expected to be affected by operations conducted under a permit, that it is considering an application for such permit, and, if objection to the issuance of the permit is received by the board within twenty days, the board may hold a public hearing for the purpose of obtaining information from the public concerning the effects of issuing the permit. The board may also hold such hearings upon its own motion.

SECTION 18. REVOCATION, SUSPENSION, OR MODIFICATION OF PERMIT. The board may suspend or revoke a permit if it appears that the permittee no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this Act, or any of the rules and adopted under it.

The board may revise the conditions and limits of a permit if:

1. The permittee is given notice and a reasonable opportunity for a hearing, to be held in accordance with chapter 28-32.

2. It appears to the board that a modification of the conditions and limits of a permit is necessary to protect the public's health, safety, welfare, or the environment.

If it appears to the board that an emergency situation exists or is impending which could endanger the public's health, safety, welfare, or the environment, the board may, without prior notice or hearing, immediately modify the conditions or limits of a permit, or order temporary suspension of a permit. The issuance of such an order shall include notice of a hearing to be held within ten days thereafter on the question of permanently modifying the conditions and limits or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions and limits of a permit shall be grounds for immediate revocation of the license and permit of the person controlling or engaged in the operation.

SECTION 19. PROOF OF FINANCIAL RESPONSIBILITY. Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by:

1. Presentation to the board of proof of a prepaid noncancellable insurance policy against such liability, in an amount approved by the board.
2. Filing with the board a corporate surety bond, cash, or negotiable securities in an amount approved by the board.

SECTION 20. BOARD MAY CREATE OPERATING DISTRICTS - REPRESENTATION OF NONCONTRACTING COUNTIES. The board shall have the authority to place any county contracting with the state for weather modification operations, in such an operational district as the board shall deem necessary to best provide such county with the benefits of weather modification. In determining the boundaries of such operating districts, the board shall consider the patterns of crops within the state, climatic patterns, and the limitations of aircraft and other technical equipment. The board may assign any county which has not created a weather modification authority under this Act to an operating district solely for the purpose of representation on the operations committee of such district.

SECTION 21. DISTRICT OPERATIONS ADVISORY COMMITTEES CREATED - DUTIES.

1. There shall be a district operations advisory committee in each operations district created in accordance with section 20 for this Act. Each committee shall be composed of one commissioner of the weather modification authority from each county within such district and one member of the board of county commissioners from the county or counties assigned to the district in accordance with

section 20 of this Act. Each advisory committee shall, upon majority vote, with the concurrence of the board, prescribe rules and bylaws necessary to govern its procedures and meetings. Each committee shall evaluate weather modification operations within its respective district and make recommendations and proposals to the board concerning such operations.

2. The weather modification authority of any county authorized to contract for weather modification operations under this Act and not assigned to an operations district, shall assume the functions of the district operations committee and shall have and may exercise the powers and duties assigned to the operations committees by this Act and by the rules of the board of weather modification.

SECTION 22. WEATHER MODIFICATION AUTHORITY MAY SUSPEND OPERATIONS. Other provisions of this Act notwithstanding, the weather modification authority in any county authorized to contract for weather modification operations under this Act may suspend the county and state weather modification operation within that county.

SECTION 23. WEATHER MODIFICATION AUTHORITY CREATED BY PETITION. A weather modification authority shall be created by resolution and five commissioners appointed thereto for ten-year terms of office, by the board of county commissioners. A board of county commissioners shall not adopt a resolution creating an authority until it has received a valid petition signed by at least fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed weather modification authority commissioners. In the event any one of the five candidates named in the petition to be appointed weather modification authority commissioner is unable or refuses for any reason to accept appointment as commissioner, or is disqualified by not meeting residence requirements, as an elector in the county, the board of county commissioners shall name its own appointee for a ten-year term of office in place of any disqualified candidate selected by the petitioners. If any weather modification authority commissioner submits his resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason, after accepting office, the board of county commissioners shall name its appointee as a commissioner to the weather modification authority. All vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired term.

Any weather modification authority created pursuant to this section shall expire ten years after the date of the initial appointment of the commissioners thereto. Any unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be transferred

into the county general fund by the officers of the weather modification authority on or before the ten-year termination date provided by this section. However, all unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall remain in the name of the weather modification authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with section 27 of this Act.

Nothing in this section shall prevent continuation or reinstatement of a weather modification authority, provided the authority is renewed for another ten years by petition of the qualified electors in the same manner as the initial weather modification authority was created by petition of qualified electors as provided for in this Act.

In the event more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the last preceding general election shall be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least forty percent of the qualified electors in the county and the sum total of all qualified electors signing all petitions filed must equal at least sixty percent of the qualified electors in the county. In no case shall the name of the same elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

SECTION 24. PETITION CONTENTS. The petition for the creation of a weather modification authority, and for appointment of commissioners shall contain:

1. A title with the heading: "Petition for Creation of (insert name of county) Weather Modification Authority".
2. The following paragraph: We, the undersigned qualified electors of (name of county), state of North Dakota, by this initiated petition request that the (name of county) board of county commissioners of said county create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to a ten-year term of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

3. The following paragraph: We, the undersigned qualified electors of the (name of county), state of North Dakota, are notified hereby that the creation of the (name of

county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant unto the authority by law the power to certify to the board of county commissioners a mill levy tax not to exceed two mills upon the net taxable valuation of property in said county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund shall be used for weather modification activities in conjunction with the state of North Dakota. We, the undersigned understand that the authority requested in this petition expires ten years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided by section 26 of this Act, for five-year periods in accordance with section 27 of this Act.

4. A heading: "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of North Dakota, are authorized to represent and act for us, and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.
5. Petition details: All signatures to such petition shall be numbered, and dated by month, day, and year. The name shall be written with residence address and post-office address including the county of residence followed by state of North Dakota.
6. An affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that he circulated the petition and that each of the signatures to said petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated.
7. The petition must state the mills to be levied by the county for the purposes of this Act.

SECTION 25. COMMISSIONERS - COMPENSATION - MEETINGS - OFFICERS. A commissioner of a weather modification authority shall receive no compensation for his services, but shall be entitled to the necessary expense, as defined in section 44-08-04, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of appointment shall be filed with the weather modification authority.

The powers of each weather modification authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. A majority of the commissioners shall constitute a quorum, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners.

A chairman, vice chairman, and treasurer shall be elected from among the commissioners. A weather modification authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the state's attorney of the county. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Minutes shall be kept by the secretary of official meetings and shall include all official business such as contracts authorized and all authorizations for payment of weather modification authority funds to persons, organizations, companies, and corporations. All disbursements shall be approved by a majority of all the commissioners of an authority. Disbursements authorized by the authority for the payment of employee salaries, bills, contracts, services, fees, expenses, and all other obligations, shall be made by check signed by the chairman and the treasurer of the authority. Official policies shall also be entered into the minutes. An annual report shall be compiled with complete disclosure of funds expended for contracts, services, fees, salaries, and all other reimbursements, a copy of which shall be filed with the county auditor. The annual report shall be presented at a public meeting called for such purpose.

SECTION 26. TAX MAY BE CERTIFIED BY WEATHER MODIFICATION AUTHORITY. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed two mills upon the net taxable valuation of the property in the county for a "weather modification" fund. The tax shall be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this Act.

SECTION 27. CREATION OF WEATHER MODIFICATION AUTHORITY AND ITS POWERS BY RESOLUTION. When a weather modification authority is about to expire, the board of county commissioners of any such county may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by section 26 of this Act, for

additional five-year periods provided, the resolution authorizing the creation of such weather modification authority is adopted by the board of county commissioners before the expiration date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five weather modification authority commissioners to five-year terms of office, subsequently filling vacancies in the manner prescribed by section 23 of this Act. The board of county commissioners may remove any weather modification commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 28. PROCEDURE FOR ABOLISHMENT OF WEATHER MODIFICATION AUTHORITY AND ALL ITS POWERS BY RECALL INITIATED PETITION. After fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the board of county commissioners of their county to recall the commissioners of a weather modification authority as created by section 23 of this Act and to abolish the county weather modification authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such weather modification authority and abolishing their appointed office and the weather modification authority, until such time as a weather modification authority is created by petition in accordance with section 23 of this Act. Before adopting such a resolution, the county commissioners must find that the petition meets the requirements as to the number of qualified electors as required in this Act. If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, shall be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. In the event there are outstanding valid bills unpaid after that date, the board of county commissioners is hereby authorized to pay such obligations from moneys in the county general fund. A recall petition shall have a title with the heading: "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition shall incorporate a paragraph stating its purpose in clear language and shall comply with all requirements prescribed in subsections 4, 5, and 6 of section 24 of this Act, relating to petition contents, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

SECTION 29. CREATION OF WEATHER MODIFICATION AUTHORITY BY ELECTION. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners, not later than forty-five days prior to the next

countywide election, the board of county commissioners shall submit the question to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 23 of this Act with all powers set out in this Act, including the power to certify a tax levy as provided by section 26 of this Act.

SECTION 30. ABOLISHMENT OF WEATHER MODIFICATION AUTHORITY BY ELECTION. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 27 and 29 of this Act is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the weather modification authority as of December thirty-first following the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

SECTION 31. CREATION OF WEATHER MODIFICATION AUTHORITY BY VOTE AFTER RESOLUTION OF COUNTY COMMISSIONERS. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall pass a resolution creating a weather modification authority, as described in section 23 of this Act. Such an authority shall have all powers provided by this Act, including the authority to levy a tax as provided by section 26 of this Act.

SECTION 32. COUNTY BUDGET MAY BE WAIVED FOR FIRST APPROPRIATION - CONDITIONS. The provisions of chapter 11-23 shall not apply to appropriations made under the provisions of this Act. However, immediately after a weather modification authority has been created by resolution of the board of county commissioners, and after certification of a mill levy by the weather modification authority, and only for the initial or first appropriation for the authority, the county commissioners may, at their discretion, appropriate from moneys, not otherwise appropriated, in the general fund, such moneys as are necessary for carrying out the provisions of this Act. However, the appropriation shall not exceed an amount equal to what funds would be raised by a two-mill levy upon the net taxable valuation of the property in the county.

SECTION 33. BIDS REQUIRED - WHEN. Whenever the board of weather modification shall undertake to contract with any licensed controller in an amount in excess of ten thousand dollars in any one

year, the board shall advertise for proposals for such weather modification activities and in its proceedings with respect to bids therefor, shall substantially follow the manner and form required by the laws of this state for the purchase of supplies by the department of accounts and purchases. The board shall enter into no contract or agreement for weather modification services except with a controller, holding the permit as required by this Act, except for the purpose of gathering technical information, and making studies or surveys.

SECTION 34. PERFORMANCE BOND REQUIRED. Before the board shall contract with any controller, it shall require the controller to furnish a surety bond for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and his agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this Act and the contract entered into by the board and the licensee.

SECTION 35. BID BOND REQUIRED. All bids submitted to the board of weather modification for operations conducted under this Act shall be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business in this state as a guaranty that the bidder will enter into the contract if it is awarded to him.

SECTION 36. STATE IMMUNITY. Nothing in this Act shall be construed to impose or accept any liability or responsibility on the part of this state or any of its agencies, or any state officials or state employees or weather modification authorities for any injury caused by weather modification operations by any person or licensed controller as defined in this Act.

SECTION 37. LIABILITY OF CONTROLLER.

1. An operation conducted under the license and permit requirements of this Act is not an ultrahazardous or abnormally dangerous activity which makes the permittee subject to liability without fault.
2. Dissemination of materials and substances into the atmosphere by a permittee acting within the conditions and limits of his permit shall not constitute trespass.
3. Except as provided in this section and in section 36 of this Act, nothing in this chapter shall prevent any person adversely affected by a weather modification operation from recovering damages resulting from negligent or intentionally harmful conduct by a permittee.
4. The fact that a person holds a license or was issued a permit under this Act, or that he has complied with the rules adopted by the board pursuant to this Act, is not

admissible as a defense in any legal action which may be brought against him.

SECTION 38. WEATHER MODIFICATION BOARD MAY RECEIVE AND EXPEND FUNDS. The weather modification board is hereby authorized to receive and accept in the name of the state any and all funds which may be offered or become available from federal grants or appropriations, private gifts, donations or bequests, county funds, or funds from any other source, except license and permit fees, and to expend said funds for the expense of administering this Act, and, with the exception of county funds, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency in this state either by direct grant, by contract, or by other means.

All federal grants, federal appropriations, private gifts, donations or bequests, county funds, or funds from any other source, except license and permit fees, received by the board shall be paid over to the state treasurer, who shall credit same to a special fund in the state treasury known as the "state weather modification fund". All proceeds deposited by the state treasurer in the state weather modification fund are hereby appropriated to the North Dakota weather modification board and shall, if expended, be disbursed by warrant-check prepared by the department of accounts and purchases upon vouchers submitted by the North Dakota weather modification board, and shall be used for the purpose of paying for the expense of administration of this Act and, with the exception of county funds, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency by direct grant, by contract, or by other means.

SECTION 39. COUNTY APPROPRIATIONS - STATE TO PROVIDE FUNDS. Any county weather modification authority which has contracted with the board of weather modification for weather modification operations under this Act shall appropriate to the state weather modification fund such amount as is determined by the board of weather modification to be necessary to provide such county with weather modification operations. The board of weather modification may expend, from the state weather modification fund, such funds as it deems necessary to provide contracting counties with weather modification operations.

SECTION 40. STATE WATER COMMISSION - COMPENSATION - EXPENSES. Each member of the North Dakota state water commission shall receive the same compensation paid for other state water commission duties, for each day actually and necessarily engaged in the performance of official duties in connection with the administration of this Act. State water commission members and employees shall be reimbursed for actual and necessary expenses incurred in carrying out their official duties in the same manner and at the same rates as provided by law for state employees.

SECTION 41. PENALTY. Any person contracting for or conducting any weather modification activity without being licensed in accordance with the provisions of this Act, or otherwise violating the provisions of this Act, shall be guilty of a class B misdemeanor.

SECTION 42. REPEAL. Chapter 2-07 of the North Dakota Century Code is hereby repealed.

Approved March 11, 1981

CHAPTER 632

HOUSE BILL NO. 1077
(Legislative Council)
(Interim Natural Resources Committee)

WATER RESOURCE DISTRICTS

AN ACT to create and enact chapter 61-16.1 of the North Dakota Century Code, relating to the establishment of proposed water resource district boundaries by the state engineer; powers, duties, and responsibilities of the water resource board; revenue bonds; development of master plans; financing of water-related projects; procedures for construction of water resource projects; to amend and reenact sections 61-01-06, 61-16-05, 61-16-06, 61-16-07, 61-16-08, 61-16-09, 61-21-01, 61-21-11, and 61-21-41 of the North Dakota Century Code, relating to water management districts and watercourses and assessment drains; to repeal sections 61-01-22, 61-16-01, 61-16-10 through 61-16-51, 61-21-04, 61-21-05, 61-21-06, 61-21-07, 61-21-08, and 61-21-09 of the North Dakota Century Code, relating to drainage permits, powers and duties of water management districts, and of boards of drainage commissioners; to provide a penalty; and to provide a partial delayed effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16.1-01. LEGISLATIVE INTENT AND PURPOSE. The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development and control of waters in this state, navigable or nonnavigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to

protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

61-16.1-02. DEFINITIONS. In this chapter, unless the context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.
3. "Commission" means the state water commission.
4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
5. "District" means a water resource district.
6. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
7. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
8. "Water resource board" means the water resource district's board of managers.

61-16.1-03. WATER RESOURCE DISTRICTS - BOUNDARIES. In furtherance of the policy set forth in section 61-16.1-01, the state engineer is hereby authorized and directed to establish proposed boundaries of water resource districts. The determinations of the state engineer shall be submitted to the legislative council, or an interim committee designated by the legislative council, for review. The proposed boundaries established by the state engineer, shall not be implemented without the enactment of appropriate enabling legislation by the forty-eighth legislative assembly. When establishing proposed boundaries the state engineer shall employ the following guidelines and criteria:

1. The primary objective shall be to establish boundaries which provide for effective coordination, planning, development, and general management of areas which have related water resource issues. To the extent that this primary objective will be accomplished, these areas shall be determined according to hydrologic patterns, utilizing recognized river basins of the state. However, existing boundaries of counties, townships, and other political subdivisions or taxing districts shall be followed wherever feasible and consistent with the primary objective of this section. Where appropriate and necessary for more efficient development and general management, two or more districts may be created within a river basin.
2. The state engineer shall prepare suggested boundaries, and shall send such suggested boundaries and associated material to each water management district and county auditor in the state. Not less than thirty days later, the state engineer shall arrange a meeting with the water management districts and county auditors in each area of the state to establish water resource district boundaries in accordance with this section. The state engineer shall then be required to hold extensive public hearings in each affected area. Notice of such public hearings shall be published at least once a week for the two consecutive weeks immediately preceding the hearing in the newspaper or newspapers of general circulation in each area, and for the same time period in the official county newspaper of each county encompassing or encompassed by, in whole or in part, the affected area. In determining and establishing the boundaries for districts, due recognition and emphasis shall be given to the wishes of the local people, the affected water management districts, and any affected county administrative officials, consistent with these guidelines and criteria.
3. Watershed boundaries shall follow approximate hydrologic patterns except where doing so would divide a section or a city, or would produce similar incongruities which might hinder the effective operation of the districts.

4. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement, and at the same time provide for optimum local representation.

61-16.1-04. MINUTES, BOOKS, AND RECORDS. The board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

61-16.1-05. BONDS OF TREASURER AND APPOINTIVE OFFICERS. The treasurer of a water resource district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the state commissioner of insurance by the secretary of the district. Upon notification by the state bonding fund of the premium required, the district treasurer shall remit the same.

61-16.1-06. DISTRICT BUDGET - TAX LEVY - FINANCING BY SPECIAL ASSESSMENT. The fiscal year of the district shall begin July first and end June thirtieth. The board of managers shall estimate the expenses of the district before July first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan prepared and adopted pursuant to section 61-16.1-14. Upon completion and adoption of a budget covering necessary expenses, the board of managers shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax of not to exceed four mills on each dollar of taxable valuation in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in

whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

61-16.1-07. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION OF TAXES LEVIED TO PAY CURRENT EXPENSES. After a water resource district has been established and organized and a water resource board has been appointed, the water resource board, for the purpose of paying current district expenses including per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution, may authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. The warrants shall bear the rate of interest set by the board, which shall not exceed twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant, and shall be signed by the chairman of the water resources board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

61-16.1-08. COUNTY TREASURER TO COLLECT AND REMIT TAXES TO DISTRICT TREASURER - INVESTMENT OF DISTRICT FUNDS - EXPENDITURE OF DISTRICT FUNDS. The treasurer of each county in which a water resource district, or a part of such district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. The district treasurer shall on or before the twentieth day of each month report to each member of the board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

61-16.1-09. REVENUE BONDS. Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ten 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 board of managers of the district. 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. Upon specific authorization by the legislative assembly and in accordance with this section, a district may issue revenue bonds in excess of an aggregate total of ten million dollars. Revenue bonds shall not be a general obligation of any county, and shall not be secured by property taxes.

61-16.1-10. POWERS OF WATER RESOURCE BOARD. Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
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 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.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.

4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.
6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district, and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.

13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.
18. Petition any zoning authority established pursuant to chapters 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote

the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.

19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The state highway department, railroads, counties, and townships shall cooperate with the districts in this effort. Each district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.

61-16.1-11. RESPONSIBILITIES AND DUTIES OF WATER RESOURCE BOARD. Each water resource board shall have the following responsibilities and mandatory duties:

1. To meet jointly with other water resource boards within a common river basin at least twice each year at such times and places as may be mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.

2. To cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. To enter into an agreement with all water resource districts of a river basin to address collectively and attempt to resolve significant water management problems of the river basin.
4. To encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and to carry out to the maximum extent possible the water management policy that upstream landowners who have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. In the planning of any surface water project which will have an impact downstream in the water resource district or another water resource district, to address and consider fully such impacts. A determination of whether to proceed with the construction of any such project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. To require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

61-16.1-12. JOINT EXERCISE OF POWERS.

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by title 61. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board.

2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution, an ad valorem tax not to exceed two mills upon the real property within each district. The levy may be in excess of any other levy authorized for a district.
3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.
4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.
6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

61-16.1-13. SCOPE OF BOARD'S EXTRATERRITORIAL CONTRACTUAL AUTHORITY - BOARD MAY ACQUIRE PROPERTY IN ADJOINING STATES AND PROVINCES. A water resource board shall have the right, power, and authority to enter into contracts or other arrangements for water

conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, or other corporations, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states. Such contracts or arrangements can provide for cooperation or assistance in planning, constructing, maintaining, and operating such projects and in making investigations and reports thereon, and for the carrying out of any other provision of this chapter. A water resource board may purchase, lease, or acquire land or other property in adjoining states or provinces to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. No water resource board of any water resource district shall have the right, power, or authority to connect boundary waters having different natural outlets by artificial means so that the waters of one may be discharged into the other.

61-16.1-14. MASTER PLANS.

1. Each water resource district shall prepare and adopt a master plan to include a statement of goals and objectives for each of the various water management activities in the district, such as drainage, flood control, water supply, and recreation. The master plan for each specific water management activity shall be reviewed and updated as often as deemed necessary by the district. A copy of the master plan as adopted and all revisions and updates shall be filed with the state engineer.
2. Each district shall also prepare and adopt a two-year priorities schedule which shall summarize planned district projects and financial needs of the district for at least the next two years. A copy of the priorities schedule shall be filed with the state engineer on or before May first of each even-numbered year.
3. The state engineer shall develop and make available to the districts guidelines regarding the format and general content of master plans, which shall be utilized by each district. The state engineer shall provide such assistance, within appropriate budget limitations, as may be necessary to help districts develop master plans and priority schedules.
4. The district shall give notice and hold public hearings on all proposed master plans. All comments on plans shall be reviewed by the district and alterations of the plans shall be made as are appropriate. Plans shall then be submitted to the state engineer by the district for review

and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the state engineer.

5. No state funds shall be allocated or disbursed to a district, after July 1, 1985, unless that district has submitted a master plan pursuant to this section for the specific water management activity for which state funds were requested, and until the commission has determined that such funds are for projects and programs which are related to that water management activity and which are in conformance with the plans of the commission and the district.

61-16.1-15. PERMIT TO CONSTRUCT OR MODIFY DAM, DIKE, OR OTHER DEVICE REQUIRED - PENALTY. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water shall be constructed within any water resource district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, shall be presented first to the state engineer. After receipt, the state engineer shall consider the application in such detail as he deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete his review of the application, and if he approves it, shall forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and any changes, conditions, or modifications of the state engineer, and if the same shall meet with the board's approval, the board shall forward the approved application to the applicant, and shall send a certification of its action to the state engineer. Any person constructing a dam, dike, or other device, which is capable of retaining twelve and one-half acre-feet [15418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, shall be liable for all damages proximately caused by such dam, dike, or other device, and shall be guilty of a class B misdemeanor.

61-16.1-16. COMMISSION, STATE ENGINEER, AND WATER RESOURCE BOARD SHALL ENCOURAGE BOTH STRUCTURAL AND NONSTRUCTURAL ALTERNATIVES. The state water commission, state engineer, and the appropriate water resource board shall encourage both structural and nonstructural solutions to water management problems within the

district by federal and state agencies, private individuals, and public and private corporations, and shall lend their aid, counsel, and assistance to any such solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, unless specifically exempted therefrom, shall be subject to all the provisions of this chapter.

61-16.1-17. DAMS OR OTHER DEVICES CONSTRUCTED WITHIN A DISTRICT SHALL COME UNDER CONTROL OF A WATER RESOURCE BOARD. All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted therefrom, shall, without affecting the state water commission's or the state engineer's authority relative to such works, automatically come under the jurisdiction of the water resource board for the district within which the dam, dike, work, or device exists or is to be constructed. No changes or modification of any existing dams, dikes, or other works or devices shall be made without complying fully with the provisions of this chapter.

61-16.1-18. WHEN DAMS CONSTRUCTED BY FEDERAL AGENCY UNDER CONTROL OF WATER RESOURCE DISTRICT. Any dam, dike, or other water control device or flood control project constructed by or with the assistance of any federal agency but which is not maintained or operated by any federal agency shall become the responsibility of the water resource district where it is located. The water resource district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary.

61-16.1-19. CONTRACTS FOR CONSTRUCTION OR MAINTENANCE OF PROJECT. If the cost of construction or maintenance of a project does not exceed fifteen thousand dollars, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such construction or maintenance exceeds fifteen thousand dollars, the lowest and best bid shall be accepted. The water resource board shall give at least ten days' notice of the time and place where contract will be let. The notice shall be published at least once in a newspaper of general circulation in the district in which the work is to be carried on and shall be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board, conditioned upon the proper performance of the contract within the time specified by such contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section shall be waived, upon the determination of the water resource board that an emergency situation exists requiring the

prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

61-16.1-20. FINANCING PROJECT THROUGH REVENUE BONDS, GENERAL TAXES, OR SPECIAL ASSESSMENTS - APPORTIONMENT OF BENEFITS. A water resource board shall have the authority, either upon request or by its own motion, to acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments the water resource board shall carry out to the maximum extent possible the water management policy of this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

61-16.1-21. FINANCING OF SPECIAL IMPROVEMENTS - PROCEDURE. When it is proposed to finance in whole or in part the construction of a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the board shall examine the proposed project, and if in its opinion further proceedings are warranted, it shall adopt a resolution and declare that it is necessary to construct and maintain the project. The resolution shall briefly state the nature and purpose of the proposed project, and shall designate a registered engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall include acquisition of right of way, and shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed project assessment district.

61-16.1-22. HEARING - NOTICE - CONTENTS. Upon the filing of the engineer's report provided for in section 61-16.1-21, and after satisfying the requirements of section 61-16.1-25, the board shall fix a date and place for public hearing on the proposed project.

Such place of hearing shall be in the vicinity of the proposed project and shall be convenient and accessible for the majority of the landowners subject to assessment for such project or whose property shall be subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of such filing shall be included in the notice of hearing. Notices of the hearing shall contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing shall specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing shall also specify when and where protests against such proposed project shall be filed and an assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or 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. The date set for such hearing shall not be less than twenty days after the first publication of the notice. A record of the hearing shall be made by the board, including a list of affected landowners present in person or by agent, and such record shall be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, shall be informed at the hearing of the probable total cost of the project and their individual share of such cost and the portion of their property, if any, to be condemned for such project.

61-16.1-23. PROTEST. At the hearing, the affected landowners, and any county, township, or city to be assessed, shall also be informed when and where protests against such proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, shall then have thirty days after the date of the hearing to file written protests with the secretary of the board, protesting the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project has been reached, no more protests may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project. Any withdrawal of a protest against the proposed project before that time must be in writing. When the protests have been filed and the deadline for filing protests has passed, the board shall immediately determine the sufficiency of the protests. If the board finds that

fifty percent or more of the total votes, as determined by section 61-16.1-24, have protested against the proposed project, then the protests shall be a bar against proceeding further with the project. If the protests are found to be insufficient in number or invalid, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-25 and 61-16.1-26, 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 title 40 for the construction of sewers within municipalities. 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. Any right of appeal shall begin to run on the date of publication of the notice.

61-16.1-24. VOTING RIGHT OR POWERS OF LANDOWNERS. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project shall be as provided in this section. The landowner or landowners of tracts of land affected by the project shall have one vote for each dollar of assessment that his land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed shall also have one vote for each dollar of assessment against such city, township, or city. It is the intent of this section to allow one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes shall be prorated among them in accordance with each owner's property interest. A written power of attorney shall authorize an agent to protest a project on behalf of any affected landowner or landowners.

61-16.1-25. ASSESSMENT OF COST OF PROJECT. Whenever the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to the hearing required under section 61-16.1-22, shall inspect any and all lots and parcels of land, which 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 especially 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 benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.

2. Any lot, piece, or parcel of land which is directly benefited by such improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, productivity and the water management policy as expressed in section 61-16.1-20. Property belonging to the United States shall be exempt from such assessment, unless the United States has provided for the payment of any assessment which may be levied against its property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be exempt from such assessment and political subdivisions whose property is so assessed shall provide for the payment of such assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such assessments, installments thereof and interest thereon from its general fund or by levy of a general property tax against all the taxable property therein in accordance with law. No tax limitation provided by any statute of this state shall apply to tax levies made by any such political subdivision for the purpose of paying any special assessments made in accordance with the provisions of this chapter. There shall be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein described to the best of their judgment and stating the several items of expense included in the assessment.

61-16.1-26. 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 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 date set for the hearing shall be not less than twenty days after the 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 such assessments are made, or the part of such cost to be paid by special assessment. No assessment shall 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 thereupon shall file the list in the office of the secretary.

61-16.1-27. APPEAL TO STATE ENGINEER. After the hearing provided for in section 61-16.1-26, affected landowners, and any

political subdivision subject to assessment having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-24, 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, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed project. Any landowner or political subdivision who or which claims that he or it will receive no benefit at all from the construction of a new project may appeal the question of whether there is any benefit to the state engineer. The state engineer shall 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 shall be final.

61-16.1-28. WHEN ASSESSMENTS MAY BE MADE. After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate shall include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work which may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, and printing of improvement warrants, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

In no event shall any contract or contracts be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-16.1-29. FINANCIAL REPORTS - LIABILITY FOR DEFICIENCIES. On the first Monday of each month the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month and the amount and items of expenditure during that month. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the

county auditor of each county in which the district lies and shall be open to public inspection.

During the month of June of each year the water resource board shall prepare a complete statement of the condition of the finances of the district and shall cause the same to be filed with the county auditor of each county in which the district lies on or before July first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its July meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

61-16.1-30. REASSESSMENT OF BENEFITS. The water resource board may 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 of the hearing shall be given by publication 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 to each owner of land affected by the project as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to any reassessment of benefits carried out under this section. The board shall not be forced to make such reassessment more than once every ten years, nor shall 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 shall be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-16.1-31. CORRECTION OF ERRORS AND MISTAKES IN SPECIAL ASSESSMENTS - REGULATIONS GOVERNING. If mathematical errors or other such mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-16.1-32. CERTIFICATION OF ASSESSMENTS TO COUNTY AUDITOR. When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against such lands in that county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16.1-41.

61-16.1-33. EXTENSION OF SPECIAL ASSESSMENTS ON TAX LISTS - COLLECTION - PAYMENT TO WATER RESOURCE DISTRICT. The county auditor

of each county shall extend the special assessments certified to the county auditor on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

61-16.1-34. LIEN OF SPECIAL ASSESSMENT. A special assessment imposed by a water resource district, together with interest and penalties which accrue thereon, shall become a lien upon the property on which the assessment is levied from the time the assessment list is approved by the water resource board until the assessment is fully paid. Such liens shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter shall be considered notice to all subsequent encumbrancers of the priority of special assessments imposed under this chapter.

61-16.1-35. SALE OF PROPERTY WHEN GENERAL AND SPECIAL ASSESSMENT TAXES ARE DELINQUENT. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date and rates as first installments of real estate taxes. Real property shall be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale shall be made by the same officer making the sale as in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, shall be advertised and sold together in one sum and one certificate shall be issued therefor.

If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there shall be no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale shall cover both general taxes and special assessments which are delinquent.

If there is no delinquent general property tax against a tract or parcel of land and it is sold for special assessments alone, the certificate of tax sale shall state that the sale was for special assessments and, if there is no private bidder the tax sale certificate and tax deed in such case shall be issued in the usual course of procedure.

61-16.1-36. COLLECTION OF TAX OR ASSESSMENT LEVIED NOT TO BE ENJOINED OR DECLARED VOID - EXCEPTIONS. The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any project under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason of any of the following:

1. Any error of any officer or board in the location and establishment thereof.
2. Any error or informality appearing in the record of the proceedings by which any project was established.
3. A lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding is brought to reverse or declare void the proceedings by which any project has been established, or to enjoin the tax levied to pay therefor, on application of either party, shall order examination of the premises, or survey of the same, or both, as may be deemed necessary. The court, on a final hearing, shall enter an order which is just and equitable, and may order the tax or any part thereof to remain on the tax lists for collection, or if the tax were paid under protest, may order, if justice requires, the whole or any part thereof to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-16.1-37. WATER RESOURCE BOARD MAY APPORTION ASSESSMENTS FOR BENEFITS OF A PROJECT AGAINST A COUNTY OR CITY OR ANY TRACT OF LAND BENEFITED. Whenever a water resource board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by a project and that the county or such township, municipality, tract, piece, or parcel of land was not included in the project area assessed for the cost of construction and maintenance of the project when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such project and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such project, and the expense of maintenance, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the project to the county, such township, or city and to each tract, piece or parcel of land being benefited. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the project was established, and by mailing such notice to the governing body of the county, township, municipality and to the owner, as determined by the records in the office of the register of deeds or county treasurer of each tract, piece, or parcel of land found to be benefited since the establishment of the project. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-16.1-38. WARRANTS - WHEN PAYABLE - AMOUNTS - INTEREST - INTEREST COUPONS. A water resource district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. Where the warrants are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 may be pledged to payment of those warrants, except that the first maturity date of any such warrant shall not be less than two years from the date of issuance. Warrants issued under this section shall be in such amounts as in the judgment of the district's board of commissioners will be necessary for the project. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon their face the purpose for which they are issued and the project fund from which they are payable and shall be signed by the chairman of the water resource board and countersigned by the secretary of the district. The warrants shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-16.1-39. WARRANTS MAY BE USED IN MAKING PAYMENTS ON CONTRACT - WARRANTS PAYABLE OUT OF FUND ON WHICH DRAWN - MAY BE USED TO PAY SPECIAL ASSESSMENTS. Improvement warrants may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds thereof, less accrued interest, shall be credited to the construction account of such fund and shall be used exclusively to pay such contracts and construction costs. Any balance remaining in any construction account after completion of a project shall be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment warrants and any interest coupons attached thereto as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the warrants and any coupons when paid.

61-16.1-40. REFUNDING SPECIAL ASSESSMENT WARRANTS - PURPOSES FOR WHICH SUCH WARRANTS MAY BE ISSUED - PAYMENT OF WARRANTS. Any district having outstanding special assessment warrants, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the warrant holders, may issue refunding special assessment warrants or bonds if there is not sufficient money in the project fund against which such warrants are drawn to pay the same. The issuance of refunding warrants or bonds

shall be authorized by resolution of the water resource board. The resolution shall describe the warrants to be refunded and the amount and maturity thereof. Refunding warrants may be issued for any of the following purposes:

1. Extend the maturities of warrants payable in whole or in part by special assessments.
2. Reduce the interest on such warrants.
3. Equalize the general property tax which the district may be, or may become, obligated to levy in order to cover deficiencies in the fund against which warrants were issued.

Refunding warrants or bonds shall bear such date, be in such date, be in such denominations, and shall mature serially within such time, not exceeding thirty years from date of issuance, as the water resource board shall determine. The average rate of interest on such warrants shall not exceed the average rate of interest on refunded warrants.

The treasurer of the district shall pay special assessment warrants, and the interest coupons attached thereto, as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the warrants when paid.

Any deficiency in any fund created for the payment of district warrants payable in whole or in part out of collections of special assessment taxes shall be the general obligation of the water resource district.

61-16.1-41. APPEAL FROM DECISION OF WATER RESOURCE BOARD - UNDERTAKING - JURISDICTION. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking shall be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking shall be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located.

61-16.1-42. APPEAL FROM DECISION OF WATER RESOURCE BOARD - HOW TO BE TAKEN. The appeal provided for in this chapter is taken by serving a written notice of appeal upon one of the members of the water resource board and upon the secretary of such board.

61-16.1-43. TIME FOR TAKING APPEAL FROM WATER RESOURCE BOARD DECISION. An appeal as authorized by sections 61-16.1-41 and

61-16.1-42 must be taken within thirty days after the decision has been entered by the secretary of the water resources board.

61-16.1-44. FILING APPEAL - DOCKETING AND HEARING APPEALS - FINAL JUDGMENT AND SENDING BACK. The appeal provided for in this chapter shall be tried at the next term of the district court after the appeal is taken. All appeals taken under this chapter shall be docketed as are other causes pending in the district court and the same shall be tried de novo. The district court may enter a final judgment, or may send the case back with directions on how to proceed.

61-16.1-45. ATTORNEY GENERAL TO ASSIST BOARDS - EMPLOYMENT OF COUNSEL. The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

61-16.1-46. PROCEEDINGS TO CONFIRM JUDICIALLY CONTRACTS, SPECIAL ASSESSMENTS AND OTHER ACTS. Any water resource board, before making any contract, or before levying special assessments, or issuing special assessment warrants, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing special assessment warrants, or leading up to any other special action, shall be judicially examined, approved, and confirmed. Such judicial proceedings shall comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-16.1-47. PENALTY FOR VIOLATION OF CHAPTER. Any person violating any of the provisions of this chapter shall, if no other criminal penalty is specifically provided, be guilty of a class B misdemeanor.

61-16.1-48. VALIDATING ORGANIZATION AND ACTS OF WATER MANAGEMENT DISTRICTS AND COUNTY DRAIN BOARDS. Nothing contained in this chapter shall be construed as impairing, invalidating or in any manner affecting the validity of acts or proceedings of water management districts or county drain boards which existed prior to the passage and approval of this chapter.

61-16.1-49. MAINTENANCE OF DRAINAGE PROJECTS. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed one dollar per acre [.40 hectare] on any agricultural lands benefited by the drain. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar per acre [.40 hectare]. The assessment of other agricultural lands in the district shall be based upon the proportion that the

assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of one dollar per acre [.40 hectare] for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for five years.

61-16.1-50. DRAINS ALONG AND ACROSS PUBLIC ROADS AND RAILROADS. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it is necessary to run a drain across a highway, the state highway department, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required culverts or bridges as provided under section 61-16.1-51. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, the railroad company, when notified by the water resource board to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

61-16.1-51. CONSTRUCTION OF BRIDGES AND CULVERTS - COSTS. The water resource board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of such construction shall be charged as part of the cost of constructing the drain, and any such bridge, culvert, or passageway shall be maintained under the authority of the water resource board, and the necessary expense shall be deemed a part of the cost of maintenance. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the cost of constructing such bridge or culvert shall be shared in the following manner:

1. The state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe. The remaining cost shall be borne forty percent by the county and sixty percent by the water resource district which has created the need for such construction.

2. If, however, moneys have not been made available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shall be paid by the county and sixty percent shall be charged as cost of the drain to the water resource district.
3. Where such bridges or culverts are constructed with federal financial participation, the costs exceeding the amount of the federal participation shall be borne by the water resource district and county according to the provisions of this section, as the case may be.

61-16.1-52. PETITION FOR A LATERAL DRAIN - BOND OF PETITIONERS.

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain, provided that a determination by a water resource board as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.
2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days, may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances

involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

3. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the water resource district for the construction of a lateral drain or ditch, the water resource district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

61-16.1-53. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-21 through 61-16.1-26 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-16.1-54. DRAIN KEPT OPEN AND IN REPAIR BY BOARD. All assessment drains that have been constructed in any district, except township drains, shall be under the charge of the water resource board and it shall be the duty of the board to keep those drains open and in good repair. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any assessment drain when requested to do so by petition of the affected landowners having fifty percent or more of the possible votes, as determined according to section 61-16.1-24.

61-16.1-55. ASSESSMENT OF COSTS OF CLEANING AND REPAIRING DRAINS. The cost of cleaning out and repairing an assessment drain shall be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-16.1-30. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

61-16.1-56. DRAINS HAVING A COMMON OUTLET MAY BE CONSOLIDATED. Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the water resource board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-16.1-57. REMOVAL OF OBSTRUCTIONS TO DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION - DEFINITION. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if the obstruction is not removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of the obstruction and assess the cost thereof, or such portion as the board shall determine appropriate, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under

sections 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be a prerequisite to such an appeal.

For the purposes of this section, "an obstruction to a drain" means any barrier to a watercourse, as defined by section 61-01-06, or any artificial drain, which materially affects the free flow of waters in such watercourse or drain.

61-16.1-58. CULVERT AND PIPE ARCH BIDS AND ACCEPTANCE. A board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-16.1-59. PERMIT TO DRAIN WATERS REQUIRED - PENALTY. Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board shall not issue a permit until flowage easements are obtained. Such flowage easements shall be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. The provisions of this section shall not be construed to apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

61-16.1-60. CLOSING A NONCOMPLYING DRAIN - NOTICE AND HEARING - APPEAL - INJUNCTION. Upon receipt of a complaint of unauthorized drainage, the board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of title 61 or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such period as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under section 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be a prerequisite to such an appeal.

61-16.1-61. REMOVAL OF A NONCOMPLYING DIKE OR DAM - NOTICE AND HEARING - APPEAL - INJUNCTION. Upon receipt of a complaint of unauthorized construction of a dike, dam or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the dike, dam, or other device is not removed within such period as the board shall determine, but not less than thirty days, the board shall cause the removal of the dike, dam, or

other device and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. Upon receipt of such demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under sections 61-16.1-41 through 61-16.1-44. A hearing as provided for in this section shall not be prerequisite to such an appeal.

61-16.1-62. AUTHORIZATION TO ORGANIZE ASSOCIATION OF WATER RESOURCE DISTRICTS.

1. Water resource districts, organized and established pursuant to this chapter, are hereby authorized upon resolution of the water resource boards to organize and participate in an association of districts.
2. The association or associations authorized hereunder shall be organized pursuant to chapters 10-24 through 10-28.

61-16.1-63. WATER RESOURCE DISTRICTS - ASSUMPTION OF ASSETS AND LIABILITIES OF DRAIN BOARDS. Beginning on July 1, 1981, each water resource district shall assume all assets, liabilities, and obligations of any county drain board whose territory is included within the boundaries of the water resource district. When the jurisdiction of any county drain board is included within two or more water resource districts, the county auditor shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district, except that special assessment projects and funds, property interests, and physical assets attached to the land shall be assumed by the water resource district in which the project is located. Property interests and physical assets attached to the land shall be assumed by the district in which they are located. Prior to February 1, 1983, and for review by each affected water resource board, each water management district and county drain board shall have a certified public accountant prepare a final audit of its financial records, including all special assessment funds and obligations, assets, and other liabilities. All necessary actions to accomplish the transfer of assets and

obligations under this section shall be complete prior to January 1, 1982.

SECTION 2. AMENDMENT. Section 61-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-06. WATERCOURSE - DEFINITION. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the state engineer shall determine if a watercourse is constituted.

SECTION 3. AMENDMENT. Section 61-16-05 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-05. WATER MANAGEMENT RESOURCE DISTRICTS - AREA TO BE INCLUDED. All land in North Dakota shall be within a water management resource district.

SECTION 4. AMENDMENT. Section 61-16-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-06. ORDER CREATING WATER MANAGEMENT RESOURCE DISTRICT. A certified copy of the order creating a water management resource district shall be filed with the county auditor of each county within the district. A like copy of the order shall be filed with the secretary of state. The secretary of state shall issue to the state water conservation commission his certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by him, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. The commission's order shall specify the name or number by which a district shall be known.

SECTION 5. AMENDMENT. Section 61-16-07 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-07. WATER RESOURCE BOARD ~~OF COMMISSIONERS~~ - APPOINTMENT AND NUMBER. When a water management resource district has been created, and the state water conservation commission has filed notice with the county auditor of a county where the district or a part thereof is situated, a water resource board ~~of district~~

~~commissioners~~ shall be appointed within ninety days, as provided herein. If the district's boundaries are confined to one county, the board of county commissioners shall appoint a district water resource board consisting of three or five ~~commissioners~~ managers. When a district includes two counties, the water resource board of commissioners shall consist of five ~~members~~ managers: three appointed by the board of county commissioners of the county having the larger aggregate taxable valuation of property, and two appointed by the board of county commissioners of the other county. If a district includes three counties, the water resource board of commissioners shall consist of five ~~members~~ managers: one appointed by the board of county commissioners having the lowest aggregate taxable valuation of property in the district, and two appointed by the board of county commissioners of each of the other two counties. If a district includes four or six counties, the water resource board of commissioners shall consist of two members from the county having the largest aggregate taxable valuation of property in the district, and one ~~member~~ manager from each of the other counties. If a district includes five or seven counties, the water resource board of commissioners shall consist of one ~~member~~ manager from each county. Appointments to the water resource board of commissioners shall be made by the boards of county commissioners of the respective counties.

SECTION 6. AMENDMENT. Section 61-16-08 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. ELIGIBILITY FOR APPOINTMENT TO BOARD - TERM OF OFFICE - REMOVAL - FILLING VACANCIES - COMPENSATION OF ~~COMMISSIONERS~~ MANAGERS. When a water management resource district has been created, any resident landowner in the district, except a county commissioner, shall be eligible, subject to the provisions of this section, for appointment to the water resource board of commissioners thereof. The terms of office of ~~commissioners~~ managers appointed to the first ~~district water resource~~ board shall be determined by lot and shall be as herein provided. If such ~~district water resource~~ board shall consist of three ~~commissioners~~ managers, one ~~commissioner~~ manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, ~~1980~~ 1982, at least one of the ~~commissioners~~ managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five ~~commissioners~~ managers, two ~~commissioners~~ managers shall hold office for the term of two years, one for three years, one for four years, and one ~~commissioner~~ manager for a term of five years from the first day of January next following the date of their ~~appointment~~ respective appointments. After expiration of the first two terms to expire after January 1, ~~1980~~ 1982, at least two of the ~~commissioners~~ managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board shall consist of seven

~~commissioners~~ managers, two ~~commissioners~~ managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, ~~1980~~ 1982, at least three of the ~~commissioners~~ managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and reoccurring flooding. When the term of office of a district ~~commissioner~~ manager has expired, his successor shall hold office for five years from the first day of January next following the date of his appointment. The term of office of a ~~commissioner~~ manager shall not terminate until his successor in office is appointed and qualified. In case the office of any district ~~commissioner~~ manager shall become vacant, the ~~commissioner~~ manager appointed to fill the vacancy shall serve the unexpired term of the ~~member--of--the--board~~ manager whose office became vacant.

Each member of the water resource board ~~of commissioners~~ shall receive the sum of forty-five dollars per day while performing his 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.

A ~~commissioner~~ 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 ~~commissioner~~ manager subject to removal, at which hearing such ~~commissioner~~ manager must be apprised of and allowed ample opportunity to repudiate such evidence, that such ~~commissioner~~ 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 7. AMENDMENT. Section 61-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-09. OATH OF OFFICE - ORGANIZATION OF WATER RESOURCE BOARD ~~OF COMMISSIONERS~~ - APPOINTMENT OF EMPLOYEES - MEETINGS. Upon receiving notice of his appointment as member of the water resource board ~~of commissioners of a water conservation and flood control district~~, such appointee shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board ~~after organization thereof as herein provided~~. Notice of the appointment of a member or members of a water resource board ~~of commissioners~~ shall be mailed to the state water conservation commission. Such notice shall state the name and post-office address of each appointee and the date of his appointment.

~~The commissioners appointed, after establishment of a water conservation and flood control district, shall meet to organize at a time and place designated by the state engineer and shall organize by selecting a chairman of the board and naming a temporary secretary pending appointment of a permanent secretary.~~ A majority of the ~~commissioners~~ managers shall constitute a quorum for the transaction of such business as may come before the board but any number may adjourn a meeting for want of a quorum. The water resource board shall appoint a secretary and treasurer and such other employees as ~~shall be deemed~~ needed for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office during at the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules ~~or regulations~~ for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting shall be mailed to each member of the board at least five days before any such meeting, provided that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

SECTION 8. AMENDMENT. Section 61-21-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-01. DEFINITIONS. In this chapter, unless the subject matter otherwise requires:

1. "Drain" ~~shall include~~ means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12.
2. "Board" ~~shall mean~~ means the board of ~~drainage commissioners~~ managers of a water resource district.
3. "Cleaning out and repairing of drain" ~~shall include~~ means deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.

4. "Lateral drain" ~~shall-mean~~ means a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board.
5. "Affected landowners" ~~shall--mean~~ means landowners whose land is subject to assessment or condemnation.

SECTION 9. AMENDMENT. Section 61-21-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-11. BOND REQUIRED FROM PETITIONERS. The board may require the petitioners referred to in section 61-21-10 to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the drainage commissioners should the petition be later denied. However, in no event shall the petitioners be required to pay expenses of surveys and of the water resources board, and any other expenses that may be incurred, if the petition is later approved, but the drain is not constructed.

SECTION 10. AMENDMENT. Section 61-21-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-41. ESTABLISHING NEW DRAINS IN LOCATION OF INVALID OR ABANDONED DRAIN. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

* SECTION 11. REPEAL. Sections 61-16-10, 61-16-24, 61-16-25, 61-16-26, 61-16-27, 61-16-30, 61-16-31, 61-16-37, 61-16-38, 61-16-39, 61-16-40, and 61-16-43 of the North Dakota Century Code and sections 61-01-22, 61-16-01, 61-16-11, 61-16-11.1, 61-16-12, 61-16-13, 61-16-14, 61-16-15, 61-16-17, 61-16-18, 61-16-19,

* NOTE: Sections 61-16-13, 61-16-28, and 61-16-32 were amended by sections 29, 30, and 31 of Senate Bill No. 2122, chapter 269.

61-16-19.1, 61-16-21, 61-16-22, 61-16-23, 61-16-26.1, 61-16-28, 61-16-28.1, 61-16-29, 61-16-32, 61-16-33, 61-16-34, 61-16-34.1, 61-16-35, 61-16-36, 61-16-44, 61-16-46, 61-16-47, 61-16-48, 61-16-49, 61-16-50, and 61-16-51 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 12. REPEAL - EFFECTIVE DATE. Sections 61-21-05, 61-21-06, 61-21-07, 61-21-08, and 61-21-09 of the North Dakota Century Code and sections 61-21-03 and 61-21-04 of the 1979 Supplement to the North Dakota Century Code are hereby repealed. This section shall not take effect until January 1, 1982.

Approved March 26, 1981

CHAPTER 633

HOUSE BILL NO. 1076
(Legislative Council)
(Interim Natural Resources Committee)

FLOODPLAIN MANAGEMENT ACT OF 1981

AN ACT to provide the state engineer with the authority to assist communities in administering floodplain management activities under the national flood insurance program [42 U.S.C. 4001 et seq.]; to provide for enforcement; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. TITLE. This Act may be cited and shall be known as the North Dakota Floodplain Management Act of 1981.

SECTION 2. LEGISLATIVE INTENT AND PURPOSE. The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this Act to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this Act to provide state coordination and assistance to communities in

floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the state engineer with authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

SECTION 3. DEFINITIONS. In this Act, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "District" means a water resource district, as defined in chapter 61-16.1.
3. "Flood fringe" means that portion of a floodplain outside of the floodway.
4. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
5. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this Act, his designee.

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

SECTION 4. DUTIES OF STATE ENGINEER. The state engineer shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the office of disaster emergency services.

4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the state engineer shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

SECTION 5. DELINEATION OF FLOODPLAINS AND FLOODWAYS. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse, he shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot at any point.

SECTION 6. FLOODPLAIN MANAGEMENT ORDINANCES.

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer for review.
2. If the state engineer determines that there is a failure by a community to comply with the intent, purposes, and provisions of this Act and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the state engineer shall notify the appropriate federal agency and the community of his or her findings. The state engineer shall also notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the state engineer determines that the community will or is complying.

SECTION 7. PERMISSIBLE FLOODWAY USES. Upon delineation of the floodway under the national flood insurance program, uses shall

be permitted within the floodway to the extent that they do not cause any increase in the elevation of the base flood.

SECTION 8. PROHIBITED USES WITHIN FLOODWAY. Upon delineation of the floodway under the national flood insurance program, the following uses shall be prohibited within any floodway:

1. A building for living purposes or place of assembly or permanent use by human beings.
2. The construction or permanent storage of an object subject to flotation or movement during flood level periods.

SECTION 9. PERMISSIBLE USES WITHIN FLOOD FRINGE. Upon delineation of the floodplain or floodway under the national flood insurance program, the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the designated floodway pursuant to section 7.
2. Structures, including residential, commercial, and industrial structures, provided that:
 - a. Such structures meet the standards either adopted by the community or under this Act, whichever are more restrictive.
 - b. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to or above the base flood level.
 - c. Commercial and industrial structures are either constructed on fill as specified in subdivision b or are adequately floodproofed up to an elevation no lower than the base flood level. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program or under this Act, whichever are more restrictive.

SECTION 10. ENFORCEMENT AND PENALTIES.

1. It is unlawful for any person to establish any use which is not in accordance with this Act within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this Act or a floodplain management ordinance adopted under or in compliance with the provisions of this Act, or adopted under the national flood insurance program, is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or

community may obtain a court order directing the removal or elimination of such public nuisance; or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this Act is guilty of a class B misdemeanor.

2. This Act shall not apply to any construction or structures existing or for which a building permit has been issued in the floodplain prior to the adoption by the community of floodplain management ordinances under the national flood insurance program.
3. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program by this Act shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

SECTION 11. EXCEPTIONS. This Act shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot at any point:

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

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

SECTION 12. AUTHORITY TO ENTER AND INVESTIGATE LANDS OR WATERS. The state engineer or any community must notify all

landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this Act. An investigation of a nonconforming use or existing construction or structure shall be made by the state engineer either on his own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

SECTION 13. STATE PROPERTY. Notwithstanding any other statutes or regulations, all state property and structures thereon shall be subject to the provisions of this Act and any ordinances adopted pursuant to this Act, or the national flood insurance program.

SECTION 14. FLOOD INSURANCE.

1. It is the policy of this state that all communities subject to excessive flooding shall participate in the national flood insurance program [Pub. L. 90-448] and acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance.

SECTION 15. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$117,000, or so much thereof as may be necessary, to the state engineer for the purpose of administering this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

Approved March 26, 1981

CHAPTER 634

SENATE BILL NO. 2130
(Committee on Natural Resources)
(At the request of the Health Department)

LAKE REHABILITATION GRANT PROGRAM

AN ACT to provide for a grant program for the protection and rehabilitation of lakes in North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS. In this Act, unless the context otherwise requires, the term:

1. "Department" means the North Dakota state department of health.
2. "Eligible project cost" means costs under construction contracts, supervision of construction work; administration; materials and equipment acquired, consumed, or expended specifically for the project; and preparation of construction drawings, specifications, estimates, and construction contract documents.
3. "Lake protection and rehabilitation projects" means projects which are designed to reduce eutrophication of lakes through watershed or in-lake treatments, or both.
4. "Unit of government" means political subdivisions of the state or state agencies with responsibilities for public lake development and control.

SECTION 2. ELIGIBILITY AND PRIORITY. The department shall promulgate rules for determining the eligibility and priority rating of lakes for protection and rehabilitation projects. Criteria to be considered shall include but not be limited to the following:

1. Severity of the problem;
2. Impact on area recreation and fisheries;
3. The likely effectiveness of the plan; and

4. Ability of the applicant unit of government to implement the plan.

The department shall, pursuant to such rules, establish a priority list of lakes eligible for protection and rehabilitation.

SECTION 3. GRANTS. Grants shall be made only to units of government and only for eligible lakes at a sum not to exceed twenty-five percent of the eligible project cost when federal funding is available. No grants shall be made for studies to determine the necessity or feasibility of eligible projects.

SECTION 4. PUBLIC ACCESS. No funds appropriated in this Act may be used for lake protection and rehabilitation projects unless adequate public access to and use of the lake is assured.

SECTION 5. CONSERVATION DISTRICT PLAN. No application for state funds may be accepted unless assurance has been given in writing to the applicant by any affected soil conservation district that a plan for lake protection and rehabilitation which controls and identifies pollutants from point and nonpoint sources which come under the jurisdiction of the district has been approved by the district.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, to the department for the purposes of this Act. Appropriated funds shall be available for four years after the effective date of the appropriation.

Approved March 31, 1981

CHAPTER 635

SENATE BILL NO. 2399
(Senators Erickson, Walsh, Wright)
(Representatives Dick, Berg, Hedstrom)

WATERBANK PROGRAM

AN ACT to provide for the creation of a state waterbank program and to empower the commissioner of agriculture to administer the Act; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DECLARATION OF INTENT. The legislative assembly finds that it is in the public interest to preserve certain wetlands of the state and thereby to conserve surface waters, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture and replenishment of aquifers, to enhance habitat for resident wildlife, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the commissioner of agriculture is authorized to adopt rules, pursuant to chapter 28-32, to implement this Act, including rules setting out the procedures and payment rates designed to effectuate the terms of this Act and the allocation of funds to those areas deemed most appropriate by the commissioner. This program is intended to supplement and complement the federal waterbank program and the payment rates established shall be at least comparable to federal rates.

SECTION 2. DEFINITIONS. In this Act, unless the context or subject matter otherwise provides:

1. "Commissioner" means the commissioner of agriculture.
2. "Wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the game and fish commissioner, in accordance with the United States fish and wildlife service circular No. 39 (1971 edition).

SECTION 3. WATERBANK AGREEMENTS. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into

for a period of five or ten years, with provision for renewal for additional five- or ten-year periods. The commissioner shall reexamine the payments rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period, in the light of the current land and crop values, and make needed adjustments in rates for any initial or renewal period.

Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner:

1. Types 3, 4, or 5 as defined in the United States fish and wildlife circular No. 39 (1971 edition).
2. Drainage of the wetlands would be feasible and practical.

SECTION 4. DUTIES OF LANDOWNER. In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas he designates, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [16 U.S.C. 1301 et seq.; Pub. L. 91-559]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as he deems appropriate.
2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.
3. Not to use such areas for agricultural purposes, except as determined by the commissioner.
4. To effectuate a wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 7 of this Act.
5. To forfeit all rights to further payments or grants under the agreement and to refund to the state all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the commissioner may

deem appropriate if he determines that the violation by the owner does not warrant termination of the agreement.

6. Upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the state all payments or grants received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.
7. Not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement.
8. To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this Act shall be made binding on any tenant or operator of the land covered by the agreement, and the agreement shall so provide.

SECTION 5. DUTIES OF COMMISSIONER. In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner.
2. For the purposes of this Act, provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate. In making this determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the waterbank program.
3. To increase the rate or rates of annual payments as determined hereunder, by an amount determined by the commissioner to be appropriate, in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the landowner agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable state law.
4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank

contract may be released to the landowner for haying or grazing, if the portion not released is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date shall be determined by the commissioner with the approval of the state game and fish commissioner. The landowner shall have first option to hay or graze released land at a per-acre rate, established by the commissioner, which shall be deducted from the next waterbank payment. If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner shall receive his full waterbank payment.

SECTION 6. RENEWAL OF AGREEMENT - TRANSFER OF LANDS. Any agreement may be renewed or extended at the end of the agreement period for an additional period of five or ten years by mutual agreement of the commissioner and the landowner, subject to any rate redetermination by the commissioner. If during the agreement period the landowner sells or otherwise divests himself of the ownership or right of occupancy of the land, the new landowner may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this section, including the provisions for renewal and adjustment of payment rates, or the new landowner may choose not to participate in the program.

SECTION 7. TERMINATION OF AGREEMENT. The commissioner may terminate any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest, and may agree to any modification of agreements he may determine to be desirable to further the purposes of the program or facilitate its administration.

SECTION 8. CONSERVATION AND DEVELOPMENT PRACTICES. For the purpose and implementation of wetland conservation and development plans as provided in sections 4 and 5 of this Act, the commissioner shall have authority to enter into agreements with the state game and fish commissioner for any assistance which may be appropriate and which will further the objectives of this Act.

SECTION 9. DRAINAGE OF WETLANDS. The commissioner shall direct the state engineer, and the state engineer shall be required, to notify the commissioner of any drainage permit application pursuant to section 61-01-22 which has been denied by the state engineer. The commissioner shall direct each water management district, and each water management district shall be required, to notify the commissioner of any drainage permit application pursuant to section 61-01-22 which has been denied by a water management district. Such notice shall be sent to the commissioner by

certified mail not later than ten days after the decision. After receipt of any such notice, the commissioner shall investigate the wetland area proposed to be drained to determine whether it would be eligible for inclusion in the state waterbank program, and shall take appropriate action to attempt to enter into an agreement under this Act with the landowner for conservation of the wetland area.

SECTION 10. AUTHORIZATION FOR RECEIPT OF FUNDS. The commissioner shall be authorized to receive funds, not exceeding one million dollars in aggregate total, for this program from any private or public source, and shall also be authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly.

SECTION 11. APPROPRIATION. There is hereby appropriated out of any moneys, public or private, received by the commissioner for this program, not exceeding \$1,000,000 in aggregate total, and not otherwise appropriated, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of implementing and administering the provisions of this Act for the biennium beginning July 1, 1981, and ending June 30, 1983. No contract shall be entered into by the commissioner unless there are moneys on hand and appropriated to pay for all of the lease payments for the duration of the contract.

Approved March 31, 1981