

WATERS

CHAPTER 590

SENATE BILL NO. 2155

(Senators Heitkamp, Fischer, G. Lee)
(Representatives Belter, Delmore, Hawken)

GROUND WATER POLICY

AN ACT to create and enact a new section to chapter 61-01 of the North Dakota Century Code, relating to findings and declaration of policy of the legislative assembly concerning the use of ground water for irrigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-01 of the North Dakota Century Code is created and enacted as follows:

Findings and declaration of policy - Use of ground water for irrigation.

The legislative assembly finds that the use of ground water for irrigation purposes is vitally important to the economic future of this state. The reliance on processing plants for the consistent quality resulting from irrigation is an important factor in preserving this state's reputation for quality agricultural production. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission strongly discourages the conversion of agricultural water permits to any other use. Further, the legislative assembly declares that any feasible or reasonable alternative supply of water be made available for municipal or domestic use to enable the continued use of ground water for irrigated agriculture and agricultural processing.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 591

HOUSE BILL NO. 1153

(Appropriations Committee)

(At the request of the State Water Commission)

WATER COMMISSION BONDS

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws, relating to the issuance of bonds for construction of an outlet from Devils Lake; to amend and reenact sections 61-02.1-01 and 61-02.1-02.1 of the North Dakota Century Code, relating to the water commission's authority to issue bonds for projects; to repeal section 61-02.1-02 of the North Dakota Century Code, relating to bond issuance amount limits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws, as amended by section 1 of chapter 559 of the 2001 Session Laws, as amended by section 1 of chapter 549 of the 2003 Session Laws is amended and reenacted as follows:

Section 11. EXPIRATION DATE. ~~Except for the issuance of bonds for construction of an outlet from Devils Lake, the~~ The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, ~~2004~~ 2007, and after that date is ineffective. ~~The authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of an outlet from Devils Lake is effective through June 30, 2005, and after that date is ineffective.~~ However, the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 2. AMENDMENT. Section 61-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health,

property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.

3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:
 - a. When:
 - (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
 - (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
 - (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;

- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
 - (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
 - (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; and
 - (8) ~~That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and~~
 - ~~(9)~~ That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;
- b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or
 - c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.
6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1,

2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:
 - a.
 - (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when either the state water commission or the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet;
 - (2) The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and
 - (3) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.
 - b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River section.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 for a project unless federal funds have been appropriated for that project.
10. Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.

11. ~~Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.~~

SECTION 3. AMENDMENT. Section 61-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-02.1. Funding - Statewide water development projects - Bond issuance amount.

1. The priorities for the statewide water development program ~~for the 2001-03 biennium~~ include municipal, rural, and industrial projects; irrigation projects; general water management projects, including rural flood control, snagging and clearing, channel improvement, recreation, and planning studies; flood control projects; and weather modification projects, which are authorized and declared to be in the public interest. The state water commission may provide the funds necessary to construct these projects from money appropriated to the state water commission from the resources trust fund, the water development trust fund, or by issuing bonds in an amount not to exceed ~~twenty~~ sixty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this section.
2. If the state water commission determines it is appropriate to do so, it may, in lieu of issuing or in combination with the issuance of bonds pursuant to ~~sections~~ this section or section 61-02.1-01 ~~and 61-02.1-02~~, for all or part of the state's cost share for the projects set forth in those provisions, use funds appropriated to it from the resources trust fund or the water development trust fund.

SECTION 4. REPEAL. Section 61-02.1-02 of the North Dakota Century Code is repealed.

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

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 592

HOUSE BILL NO. 1399

(Representatives Damschen, DeKrey, Monson)
(Senators Fischer, Trenbeath)

WATERCOURSE SPECIAL ASSESSMENTS

AN ACT to amend and reenact section 61-16.1-09.1 of the North Dakota Century Code, relating to special assessments for snagging, clearing, and maintaining watercourses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris of bridges and low water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be determined by the state engineer. All provisions of this chapter apply to assessments levied under this section except:
 - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.

- (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
 - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the board affected water resource boards and a quorum of the board affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 15, 2005
Filed March 16, 2005

CHAPTER 593

HOUSE BILL NO. 1274

(Representatives Wald, Haas, Kerzman)
(Senators Urlacher, Wardner)

SOUTHWEST PIPELINE RATES FOR LARGE USERS

AN ACT to amend and reenact section 61-24.3-07 of the North Dakota Century Code, relating to southwest pipeline water delivery rates and charges for large industrial users; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.3-07 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-07. Capacity for industrial use. Upon receipt of a commitment from any large industrial user through the execution of a water service contract for the purchase of water from the southwest pipeline project, or other appropriate contract, as required by the commission, the commission shall have the authority to include in the southwest pipeline project sufficient capacity to provide water to such large industrial user, and to determine the rates and charges for delivery of water to the industrial user. ~~Any large industrial user shall pay, in the manner determined by the commission, at least the proportionate costs of the project based on the large industrial user's proportionate capacity of the southwest pipeline project. In this section, large industrial user means an industrial user which uses seven hundred twenty-four acre feet [893039 cubic meters] of water or more each year for industrial purposes, including, but not limited to, electrical generation or energy conversion facilities.~~

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 594

SENATE BILL NO. 2293

(Senators Heitkamp, Every, Traynor)
(Representatives Devlin, D. Johnson, Vigesaa)

WATER SUPPLY SYSTEM CONVERSION

AN ACT to create and enact a new section to chapter 61-35 of the North Dakota Century Code, relating to conversion of water resource district water supply systems to water districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-35 of the North Dakota Century Code is created and enacted as follows:

Conversion of water resource district water supply system to water district. A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the state engineer to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water supply system and is

responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 2005

Filed March 25, 2005

CHAPTER 595

SENATE BILL NO. 2126

(Natural Resources Committee)

(At the request of the State Water Commission)

DEVILS LAKE OUTLET COMMITTEE MEMBERSHIP

AN ACT to amend and reenact section 61-36-01 of the North Dakota Century Code, relating to membership of the Devils Lake outlet management advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

61-36-01. Devils Lake outlet management advisory committee - Members - Terms - Vacancies. The Devils Lake outlet management advisory committee consists of the state engineer or the state engineer's designee, one member appointed by the Red River joint water resource board, one member appointed by the Devils Lake joint water resource board, one member appointed by the upper Sheyenne River joint water resource board, one county commissioner from Ramsey County appointed by the Ramsey County board of county commissioners, one county commissioner from Benson County appointed by the Benson County board of county commissioners, a representative of the Spirit Lake Nation appointed by the tribal council of the Spirit Lake Nation, and three members appointed by the governor. The members appointed by the governor must represent the interests affected by downstream impacts of operating an outlet to Devils Lake. An appointed member may designate a substitute to serve in that person's capacity at such meetings that person may be unable to attend. Except for the first term, all appointed members serve for a term of four years or until their successors are appointed and qualified. For the first term, two of the members from the Devils Lake basin must serve two-year terms and two of the other appointed members must serve two-year terms, provided that at least one member representing the interests affected by downstream impacts of operating an outlet to Devils Lake must remain on the committee for a four-year term. The chairman shall hold the first meeting within two months after August 1, 1997. Terms expire on the first day of July. Each appointed member must be a qualified elector of the state and is subject to removal by judicial procedure. A vacancy must be filled in the same manner as original appointments for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointed member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 596

SENATE BILL NO. 2295

(Senators Heitkamp, Fischer, G. Lee)
(Representatives Carlson, Thoreson)

LAKE AGASSIZ WATER AUTHORITY BONDS

AN ACT to create and enact a new subsection to section 61-35-12 and sections 61-39-06, 61-39-07, 61-39-08, 61-39-09, 61-39-10, 61-39-11, 61-39-12, 61-39-13, 61-39-14, 61-39-15, and 61-39-16 of the North Dakota Century Code, relating to issuance of bonds by the Lake Agassiz water authority; and to amend and reenact sections 61-39-01, 61-39-02, 61-39-03, and 61-39-05 of the North Dakota Century Code, relating to water supply contracts and membership of and powers of the Lake Agassiz water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the district to secure payment of the district's obligations created by the contracts.

SECTION 2. AMENDMENT. Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

61-39-01. Findings and declaration of policy. The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, improve, and own the Red River valley water supply project and the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

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

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

SECTION 3. AMENDMENT. Section 61-39-02 of the North Dakota Century Code is amended and reenacted as follows:

61-39-02. Lake Agassiz water authority created. The Lake Agassiz water authority consists of cities and water districts located in that part of the state which is included within the boundaries of Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Sargent, and Richland Counties and that pay dues to the authority. Minnesota cities may join the authority, provided a portion of the city is located within five miles [8.05 kilometers] of this state, or if the city uses the Red River for its primary water supply. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in this chapter, or which may be reasonably implied. Cities and water districts may pay dues to the authority as determined by the authority.

SECTION 4. AMENDMENT. Section 61-39-03 of the North Dakota Century Code is amended and reenacted as follows:

61-39-03. Lake Agassiz water authority - Board of directors. The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.
8. One member from a Minnesota city with a population of more than thirty thousand and which is located within five miles [8.05 kilometers] of this state.

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

SECTION 5. AMENDMENT. Section 61-39-05 of the North Dakota Century Code is amended and reenacted as follows:

61-39-05. Authority of the ~~district~~ Lake Agassiz water authority. The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the agencies or political subdivisions of the state; its agencies, or its political subdivisions of North Dakota or other states, in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.

6. Operate and manage the authority to distribute water ~~throughout eastern North Dakota to its members and others~~ within or outside the territorial boundaries of ~~the authority~~ this state.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract or contracts to provide for a supply of bulk water from the Garrison Diversion Conservancy District ~~and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority~~ which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, which Red River valley water supply projects the Garrison Diversion Conservancy District may acquire, construct, improve, and own, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, and which contract or contracts the Garrison Diversion Conservancy District may execute without limitation on term of years.
9. Enter a contract or contracts to provide for a bulk sale, lease, or other supply of water for beneficial use to persons within or outside the authority, which contract or contracts may provide for payments to fund some or all of the Garrison Diversion Conservancy District's costs of acquiring, constructing, or reconstructing one or more Red River valley water supply projects, as well as the Garrison Diversion Conservancy District's costs of operating and maintaining one or more Red River valley water supply projects, whether the acquisition, construction, or reconstruction of any Red River valley water supply project actually is completed and whether water actually is delivered pursuant to the contract or contracts, which contract or contracts cities and water districts that are members of the Lake Agassiz water authority are authorized to execute without limitation on term of years.
- 9- 10. Borrow money as provided in this chapter.
- 40- 11. Issue and sell revenue bonds for its own benefit or for the benefit of the Garrison Diversion Conservancy District, in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project, purchasing bulk water, or otherwise making capital payments required under a water purchase contract.
12. Lend some or all proceeds of its revenue bonds to the Garrison Diversion Conservancy District, to the state of North Dakota, or to a political subdivision or public body within the state, to facilitate the Garrison Diversion Conservancy District's acquisition, construction, reconstruction, or improvement of one or more Red River valley water supply projects, or any feasibility study or preliminary economic,

engineering, or legal work relating to any Red River valley water supply project.

44. 13. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
42. 14. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project or otherwise.
43. 15. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
44. 16. Pledge revenues of the authority to the punctual payment of principal and interest on bonds or water purchase contract obligations. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds as well as, the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended, and the revenues received from payments made under water sale contracts between the authority and persons that contract to purchase water from the authority.
45. 17. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
46. 18. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter into agreements with the agency respecting the loan or grants.
47. 19. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.
20. Operate and manage the authority to distribute water to western Minnesota cities that are members of the authority.

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

SECTION 6. Section 61-39-06 of the North Dakota Century Code is created and enacted as follows:

61-39-06. Resolution authorizing the issuance of revenue bonds. The issuance of revenue bonds or refunding bonds must be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the

board. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

Each resolution providing for the issuance of bonds provided for in this chapter must set forth the purpose or purposes for which the bonds are to be issued, the provisions for payment of the bonds, and the revenues or other funds pledged to secure the payment of the bonds.

SECTION 7. Section 61-39-07 of the North Dakota Century Code is created and enacted as follows:

61-39-07. Provisions governing bonds. The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

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

SECTION 8. Section 61-39-08 of the North Dakota Century Code is created and enacted as follows:

61-39-08. Sale of bonds - When private sale authorized - Public sale and notice. Revenue bonds or refunding bonds may be sold at public or private sale on such terms as the board deems appropriate.

SECTION 9. Section 61-39-09 of the North Dakota Century Code is created and enacted as follows:

61-39-09. Notes issued pending preparation of bonds - Negotiability. Pending the issuance of bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

SECTION 10. Section 61-39-10 of the North Dakota Century Code is created and enacted as follows:

61-39-10. Validity of notes and bonds. Bond anticipation notes, revenue bonds, or refunding bonds bearing the manual or facsimile signatures of the appropriate officers who are in office on the date of signing are valid and binding

obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the notes or bonds have ceased to be officers of the issuing authority. The resolution authorizing the notes or bonds may provide that the notes or bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

SECTION 11. Section 61-39-11 of the North Dakota Century Code is created and enacted as follows:

61-39-11. Notes and bonds exempt from taxation. Notwithstanding any restriction contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the authority pursuant to this chapter, and the bonds are authorized security for public deposits. Notes and bonds, including refunding bonds, issued under this chapter and their income are exempt from all taxation by the state or by any political subdivision except inheritance, estate, and transfer taxes.

SECTION 12. Section 61-39-12 of the North Dakota Century Code is created and enacted as follows:

61-39-12. Covenants and provisions that may be inserted in resolution authorizing bonds. Any resolution authorizing the issuance of bonds under this chapter may contain covenants and provisions concerning:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of a project.
2. The use and disposition of all or a portion of the authority's income, profits, and revenues.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.
4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring civil action on the bonds.
6. The creation, priority, and enforcement of liens against the authority's income, profits, or revenues.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the authority's income, profits, or revenues.
8. The creation and use of synthetic interest rate contracts, interest rate caps, floors, and collars, and other techniques to lower the authority's borrowing rate and or reduce its exposure to interest rate risk.

9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the authority of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the authority issued to finance or refinance a project or that may be outstanding when the bonds thus subordinated are issued and delivered.
16. Provisions with respect to the authority entering an agreement with a private bond insurer, bank, or other liquidity or credit enhancer for bond insurance, a guarantee, a letter of credit, or any other credit or liquidity enhancement that the authority may find to be advantageous or necessary to insure, guaranty, or enhance the payment of the principal of or interest on or liquidity for some or all of the bonds. The cost of any such enhancement or liquidity may be paid from bond proceeds or from other funds of the authority available for this purpose.

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

SECTION 13. Section 61-39-13 of the North Dakota Century Code is created and enacted as follows:

61-39-13. Liability of authority for notes and bonds - Taxing power prohibited. Bond anticipation notes, revenue bonds, and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the authority's notes and bonds may not be subject to any pecuniary liability. The holder of any such notes or bonds may not enforce payment of the notes or bonds against any property of the authority. Notes

and bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the authority, other than the revenues pledged to their payments. Each note and each bond issued under this chapter must recite in substance that the note or bond and interest on the note or bond is payable solely from the revenue pledged to the payment and that the note or bond does not constitute a debt of the state within the meaning of any constitutional or statutory limitation.

SECTION 14. Section 61-39-14 of the North Dakota Century Code is created and enacted as follows:

61-39-14. Duties of authority and officers relative to the issuance of bonds. To adequately secure the payment of bonds and interest on the bonds, the authority and its officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.
2. Operate any project financed by the authority in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rental, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of any project;
 - b. To make all payments required under any water purchase contract the authority may execute;
 - c. To pay the interest and principal on the authority's notes and bonds as they become due;
 - d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - e. To meet any other obligations of the authority that are charges, liens, or encumbrances upon the revenues of the authority.
3. Operate, maintain, preserve, and keep every part of any tangible project financed and owned or operated by the authority in good repair, working order, and condition.
4. Enforce the provisions of all water purchase and sale contracts that produce revenues pledged to payment of bonds.
5. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.

6. Pay and discharge all lawful claims for labor, materials, and supplies which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
7. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds or, if the resolution is modified, as provided in the modified resolution.
8. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the authority are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

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

SECTION 15. Section 61-39-15 of the North Dakota Century Code is created and enacted as follows:

61-39-15. Remedies of bondholders in general. Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other civil action, enforce the holder's rights against the authority and its board and any of its officers, agents, or employees and may require the authority or the board or any officers, agents, or employees of the authority or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By civil action, require the authority and the board to account as if they were the trustees of an express trust.
3. By civil action, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

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

SECTION 16. Section 61-39-16 of the North Dakota Century Code is created and enacted as follows:

61-39-16. Project - Definition. As used in this chapter, unless the context otherwise requires, the term project means either a system, plant, works, instrumentality, or property used to provide water supply in connection with the Red River valley water supply project, or a contract for the purchase of water, including a contract for the bulk purchase of water from the Garrison Diversion Conservancy District delivered by means of a Red River valley water supply project.

Approved March 25, 2005

Filed March 25, 2005