

## **CHAPTER 61-04.1 WEATHER MODIFICATION**

### **61-04.1-01. 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.

### **61-04.1-02. 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.

### **61-04.1-03. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the North Dakota atmospheric resource board which, in the exercise of the powers granted under this chapter, has 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 operations.
3. "Geographical region" means a geographical area with a contiguous boundary that may enclose a portion of any county or counties.
4. "Hail suppression" refers to the activation of any process that will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.
5. "Increasing precipitation" refers to the activation of any process that 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.
6. "Initiating precipitation" refers to the process of causing precipitation from clouds which could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.
7. "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.
8. "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.
9. "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.

10. "Weather modification authority" means the governing body created by a board of county commissioners under section 61-04.1-22.1, 61-04.1-23, 61-04.1-27, 61-04.1-29, or 61-04.1-31.

#### **61-04.1-03.1. Atmospheric resource board.**

Repealed by S.L. 1999, ch. 538, § 9.

#### **61-04.1-04. North Dakota atmospheric resource board created - Membership.**

There is hereby created a North Dakota atmospheric resource 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 61-04.1-05. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to the governor 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 chapter within a district, then the governor shall appoint a board member of the governor's choice residing within such district.

#### **61-04.1-05. Board districts created.**

Members of the 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.

#### **61-04.1-06. Direction and supervision by state water commission - Independent functions retained by board.**

The powers, functions, and duties of the board shall be administered under the direction and supervision of the 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 commission.

#### **61-04.1-07. Board officers - Compensation.**

All members of the board, with the exception of the chairman, are voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members 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 are entitled to receive compensation per day in the amount provided for members of the legislative management under section 54-35-10 and must 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 must be reimbursed for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in sections 44-08-04 and 54-06-09.

**61-04.1-08. Powers and duties of board.**

The board has the following powers and duties:

1. The board shall appoint an executive director to serve at the board's discretion and to perform duties assigned by the board.
2. The board shall authorize the employment of staff the board deems necessary to carry out the provisions of this chapter. 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 this recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this chapter. The provisions of chapter 28-32 apply to this chapter and rules of the board must be published in the North Dakota Administrative Code.
4. The board may contract with any person to carry out weather modification operations and, in connection with regulated weather modification operations in a county or geographical region, shall carry on monitoring and evaluation activities.
5. The board may order any person who is conducting weather modification operations in violation of this chapter or any rules adopted to implement this chapter, to cease and desist from those operations and the order is enforceable in any court of competent jurisdiction within this state.
6. The board may cooperate and contract with any person 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 chapter. The board may request and accept any grants of funds or services from any person and expend these funds or use these services to carry out this chapter.
7. The board shall monitor the current state of knowledge regarding the magnitude and impacts of possible regional and global climatic changes and shall provide information to other state agencies that may benefit from this knowledge.
8. The board shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
9. The board may plan and study a hail suppression pilot program that would provide urban and rural hail suppression operations statewide or to any portion of the state.

**61-04.1-09. Board to establish research and development program - Hail suppression pilot program.**

1. 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.
2. If the board plans and studies a hail suppression pilot program, the board may conduct a planning phase that includes studying the impact on the environment, providing public education, and formulating an operations plan.

**61-04.1-10. Biennial report.**

The board may prepare and transmit a biennial report to the governor in accordance with sections 54-06-03 and 54-06-04. If submitted, the report must describe the research and

development activities conducted during the biennium, and the outcome thereof, and other related work and activities.

**61-04.1-11. License and permit required.**

Except as provided in section 61-04.1-12, no person may engage in weather modification activities without both a professional weather modification license issued under section 61-04.1-14 and a weather modification permit issued under section 61-04.1-16. Licenses shall expire on December thirty-first of the year of issuance.

**61-04.1-12. Exemptions.**

The board may provide by rule for exemption of the following activities from the license and permit requirements of section 61-04.1-11:

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 chapter.

**61-04.1-13. 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 10-19.1, prior to conducting such operations, file with the secretary of state an authorization designating an agent for the service of process.

**61-04.1-14. 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 61-04.1-13 or chapter 10-19.1.

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.

**61-04.1-15. 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 chapter.
4. Failure to comply with any provisions of this chapter or any rules adopted by the board pursuant to this chapter.

**61-04.1-16. 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, 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 61-04.1-19.
  - 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 chapter.
  - b. The applicant has furnished satisfactory proof of financial responsibility in accordance with section 61-04.1-19.
  - 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 chapter.
    - (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 workforce safety and insurance coverage for all employees working in this state.
  - f. The applicant has furnished a performance bond as required by section 61-04.1-34.
  - 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 61-04.1-35.
  - i. The applicant has registered, with the North Dakota aeronautics commission, any aircraft intended to be used in connection with the operation.
- To carry out the objectives and purposes of this chapter, 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.

#### **61-04.1-17. 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.

**61-04.1-18. 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 chapter, or any of the rules 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.

**61-04.1-19. 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 noncancelable 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.

**61-04.1-20. Board may create operating districts - Representation of noncontracting counties.**

The board may place any county or geographical region for which a person contracts with the state for weather modification operations in any operational district the board determines necessary to best provide that county or geographical region with the benefits of weather modification. In determining the boundaries of an operating district, 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 that has not created a weather modification authority under this chapter to an operating district solely for the purpose of representation on the operations committee of that district.

**61-04.1-21. District operations advisory committees created - Duties.**

1. There must be a district operations advisory committee in each operations district created in accordance with section 61-04.1-20. Each committee must be composed of one commissioner of the weather modification authority, if a weather modification authority exists, from each county within the district; a representative of each person contracting for a geographical region assigned to the district; and one member of the board of county commissioners from each county assigned to the district. Each advisory committee, upon majority vote, with the concurrence of the board, shall adopt rules and bylaws necessary to govern that committee's procedures and meetings. Each committee shall evaluate weather modification operations within that committee's district and make recommendations and proposals to the board concerning these operations.
2. The weather modification authority of any county authorized to contract for weather modification operations under this chapter which is not assigned to an operations district shall assume the functions of the district operations committee and may

exercise the powers and duties assigned to the operations committees by this chapter and by the rules of the board.

**61-04.1-22. Weather modification authority may suspend operations.**

Other provisions of this chapter notwithstanding, the weather modification authority in any county authorized to contract for weather modification operations under this chapter may suspend the county and state weather modification operation within that county.

**61-04.1-22.1. Temporary weather modification authority.**

The board of county commissioners of any county that has no weather modification authority may create a temporary weather modification authority by setting a time and place for a public hearing, publishing at least ten days before the hearing notice of the hearing in the official newspaper of the county, and after the public hearing, approving establishment of the authority by majority vote. Upon approval, the board of county commissioners shall designate a water resource district to serve as the temporary weather modification authority. The designated district has all the powers granted to a weather modification authority under sections 61-04.1-23 through 61-04.1-32.

A temporary weather modification authority created under this section may conduct weather modification operations within the county for up to four years from the date of the creation of the temporary authority. To continue operating beyond the four-year period, the temporary authority must be made permanent in accordance with sections 61-04.1-23 through 61-04.1-32.

**61-04.1-23. 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 a qualified 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 a 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 61-04.1-27.

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 chapter.

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 electors of the county 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 qualified elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

#### **61-04.1-24. 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 seven mills upon the 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 61-04.1-26, for five-year periods in accordance with section 61-04.1-27.
4. A heading: "Committee for Petitioners", followed by this statement: The following qualified 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 the person 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 chapter.

#### **61-04.1-25. Commissioners - Compensation - Meetings - Officers.**

The appointing authority shall establish the rate of compensation for commissioners of a weather modification authority and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority. Each commissioner



shall hold office until a 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 constitutes a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. Although a majority of the commissioners constitutes a quorum, 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, corporations, and limited liability companies. 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.

**61-04.1-26. (Effective for taxable years beginning before January 1, 2016) Funding for support of weather modification authority.**

The weather modification authority may request annually that the board of county commissioners provide funding from revenues derived from its general fund levy for support of the authority and to provide weather modification services. The funding under this section approved by the board of county commissioners must be deposited in the weather modification fund and shall be used only for weather modification activities in conjunction with the state of North Dakota.

**(Effective for taxable years beginning after December 31, 2015) Funding for support of weather modification authority - Financial report.** The weather modification authority may request annually that the board of county commissioners provide funding from revenues derived from its general fund levy for support of the authority and to provide weather modification services. In the year for which the levy is sought, the weather modification authority seeking approval of a property tax levy under this chapter must file with the county auditor, at a time and in a format prescribed by the county auditor, a financial report for the preceding calendar year showing the ending balances of each fund held by the authority during that year. The funding under this section approved by the board of county commissioners must be deposited in the weather modification fund and shall be used only for weather modification activities in conjunction with the state of North Dakota.

**61-04.1-27. 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 61-04.1-26, 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 61-04.1-23.

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.

**61-04.1-28. 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 61-04.1-23 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 offices and the weather modification authority, until such time as a weather modification authority is created by petition in accordance with section 61-04.1-23. 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 chapter. 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 61-04.1-24, relating to petition contents, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

**61-04.1-29. 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 qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 61-04.1-23 with all powers set out in this chapter, including the power to certify a tax levy as provided by section 61-04.1-26.

**61-04.1-30. 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 61-04.1-27 and 61-04.1-29 is presented to the board of county commissioners, not later than sixty days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, 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.

**61-04.1-31. 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 on the question, the board of county commissioners shall pass a resolution creating a weather modification authority, as described in section 61-04.1-23. Such an authority shall have all powers provided by this chapter, including the authority to levy a tax as provided by section 61-04.1-26.

**61-04.1-32. 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 chapter. 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 board of county commissioners may appropriate from moneys, not otherwise appropriated, in the general fund, such moneys as are necessary for carrying out the provisions of this chapter. However, the appropriation shall not exceed an amount equal to what funds would be raised by a seven-mill levy upon the taxable valuation of the property in the county.

**61-04.1-33. Bids required - When.**

Whenever the board 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 office of management and budget. The board shall enter into no contract or agreement for weather modification services except with a controller, holding the permit as required by this chapter, except for the purpose of gathering technical information, and making studies or surveys.

**61-04.1-34. Performance bond, cash, or negotiable securities required.**

Before the board shall contract with any controller, it shall require the controller to furnish a surety bond or cash or negotiable securities for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and the licensee's agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this chapter and the contract entered into by the board and the licensee.

**61-04.1-35. Bid bond, cash, or negotiable securities required.**

All bids submitted to the board for operations conducted under this chapter shall be accompanied by a separate envelope containing a bidder's bond or cash or negotiable securities in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal or by a surety company authorized to do business in this state as a guarantee that the bidder will enter into the contract if it is awarded to the bidder.

**61-04.1-36. State immunity.**

Nothing in this chapter 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 chapter.

**61-04.1-37. Liability of controller.**

1. An operation conducted under the license and permit requirements of this chapter 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 the permittee's permit shall not constitute trespass.
3. Except as provided in this section and in section 61-04.1-36, 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 chapter, or that the person has complied with the rules adopted by the board pursuant to this chapter, is not admissible as a defense in any legal action which may be brought against the person.

**61-04.1-38. Board may receive and expend funds.**

The board may receive and accept in the name of the state any funds that are offered or become available from any federal grant or appropriation, private gift, donation, or bequest, county funds, or funds from any other source except license and permit fees, and to expend these funds for the expense of administering this chapter, and, with the exception of county funds and funds from any other person contracting with the board for weather modification operations, 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 by direct grant, contract, or 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 must be paid over to the state treasurer, who shall credit this amount 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 appropriated to the board and, if expended, must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the board and must be used for the purpose of paying for the expense of administration of this chapter and, with the exception of county funds or funds from any other person contracting with the board for weather modification operations, 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, contract, or other means.

**61-04.1-39. Payment for weather modification - State to provide funds.**

Any weather modification authority or person that contracted with the board for weather modification operations under this chapter shall appropriate to the state weather modification fund the amount determined by the board to be necessary to provide that weather modification authority or person with weather modification operations. The board may expend, from the state weather modification fund, the funds the board deems necessary to provide a contracting weather modification authority or person with weather modification operations.

**61-04.1-40. State water commission - Compensation - Expenses.**

Each member of the North Dakota state water commission shall receive the same compensation paid for other commission duties, for each day actually and necessarily engaged in the performance of official duties in connection with the administration of this chapter. 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.

**61-04.1-41. Penalty.**

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