

## **CHAPTER 61-02 WATER COMMISSION**

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

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

#### **61-02-01.1. Statewide water development program.**

The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The state water commission shall develop and implement a comprehensive statewide water development program. The commission shall design the 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.

#### **61-02-01.2. State water commission - Policies for water retention projects.**

The state water commission shall develop policies, including cost-sharing guidelines, which further the development of water retention projects for flood control. The commission shall provide a report regarding the policies to the sixty-second legislative assembly.

#### **61-02-01.3. Comprehensive water development plan.**

Biennially, the commission shall develop and maintain a comprehensive water development plan organized on a river basin perspective, including an inventory of future water projects for budgeting and planning purposes. As part of the commission's planning process, to facilitate local project sponsor participation and project prioritization and to assist in education regarding life cycle analyses for municipal water supply projects, and economic analyses for flood control and water conveyance projects expected to cost more than one million dollars, the commission shall develop a policy that outlines procedures for commissioner-hosted meetings within the upper Red River, lower Red River, James River, Mouse River, upper Missouri River, lower Missouri River, and Devils Lake drainage basins.

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

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

1. Must provide a water supply project is eligible for a cost-share up to seventy-five percent of the total eligible project costs.
2. May not determine program eligibility of water supply projects based on a population growth factor. However, a population growth factor may be used in prioritizing projects for that purpose.
3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense and regular maintenance, including removal of vegetative materials and sediment, for water conveyance projects and may exclude operations expense and regular maintenance for other projects. The commission shall require a water project sponsor to maintain a capital improvement

fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

4. May not determine program eligibility of water supply projects based on affordability. However, affordability may be used in prioritizing projects for that purpose.

#### **61-02-01.5. North Dakota outdoor heritage fund grants - Effect on local cost-share.**

For projects involving the repair of an existing flood control or recreation structure, the state water commission may not deduct North Dakota outdoor heritage fund moneys provided from the cost of the project before determining the local cost-share. The state water commission shall include those provided moneys as part of the local cost-share, however, the local entity may not receive funding in excess of the total project cost.

#### **61-02-02. Definitions.**

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

1. "Commission" means the state water commission.
2. "Cost of works" includes:
  - a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
  - b. The cost of all water rights acquired or exercised by the commission in connection with such works;
  - c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
  - d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;
  - e. Administrative expenses;
  - f. The construction of the works and the placing of the same in operation; and
  - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter, including funding of debt service, repair and replacement reserves, capitalized interest, and the payment of bond issuance costs.
3. "Cost-share" means funds appropriated by the legislative assembly or otherwise transferred by the commission to a local entity under commission policy as reimbursement for a percentage of the total approved cost of a project approved by the commission.
4. "Economic analysis" means an estimate of economic benefits and direct costs that result from the development of a project.
5. "Grant" means a one-time sum of money appropriated by the legislative assembly and transferred by the commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
6. "Life cycle analysis" means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
7. "Loan" means an amount of money lent to a sponsor of a project approved by the commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
8. "Owner" includes all individuals, associations, corporations, limited liability companies, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired.
9. "Project" means any one of the works defined in subsection 11, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
10. "Water conveyance project" means any surface drainage works, bank stabilization, or snagging and clearing of water courses.

11. "Works" includes:
  - a. All property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
  - b. All water rights acquired and exercised by the commission in connection with such works;
  - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units, mains, pipelines, treatment plants, and waterworks systems; and
  - d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water, including without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

**61-02-03. Apportioning or allocating water rights by commission.**

In case any water rights shall be acquired or exercised by the commission in connection with two or more works and projects, the commission, by resolution, shall apportion or allocate to each of such works or projects such part of such water rights as it may determine, and upon adoption of such a resolution, such water rights shall be deemed to be a part of each of such works and projects to the extent that such water rights have been so apportioned or allocated thereto respectively.

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

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

**61-02-04.1. Conflict of interest.**

1. A member of the commission who has a direct or indirect personal or pecuniary interest in a matter before the commission must disclose that fact to the commission and may not participate in or vote on that particular matter.
2. Sections 12.1-13-02, 12.1-13-03, and 48-01.2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

**61-02-05. Chairman of commission.**

The governor shall be the chairman of the commission. The governor shall designate a vice chairman who shall be a member of the commission. The state engineer shall be the secretary of the commission.

**61-02-06. Principal and branch offices of commission.**

The commission shall maintain its principal office in the city of Bismarck and may maintain such branch offices in the state as it may determine.

**61-02-07. Quorum - What constitutes.**

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

**61-02-08. Meetings of commission.**

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

**61-02-09. Commission a state agency - Function as state.**

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

**61-02-10. Commission to have seal - Judicial notice.**

The commission shall have a seal bearing its name. Such seal shall be affixed to such records and other instruments as the commission may direct, and all courts shall take judicial notice thereof.

**61-02-11. Commission may adopt rules and regulations - Record kept by commission - Inspection.**

The commission may adopt and enact all rules, regulations, resolutions, and bylaws deemed suitable and necessary in the conduct of its business and the performance of its duties. It shall keep accurate minutes and records of all its acts which at all reasonable times shall be open for public inspection and which it may cause to be published as it may deem desirable.

**61-02-12. Compensation and expenses of appointive members of commission.**

Each appointive member of the commission is 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 expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the commission or, at the discretion of the member, may receive either per diem compensation or expenses in those amounts while otherwise engaged in official business of the commission, including time of travel between home and the place at which the member performs such duties.

**61-02-13. Employment of assistants.**

The commission may hire and employ all necessary aid, help, and assistants, including members of all the professions, for the efficient performance of its powers and duties.

**61-02-14. Powers and duties of the commission.**

The commission shall have full and complete power, authority, and general jurisdiction:

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

- b. To impound water for the improvement of municipal, industrial, and rural water supplies.
  - c. To control and regulate floodflow in the streams of the state to minimize the damage of such floodwaters.
  - d. To conserve and develop the waters within the natural watershed areas of the state and, subject to vested rights, to divert the waters within a watershed area to another watershed area and the waters of any river, lake, or stream into another river, lake, or stream.
  - e. To improve the channels of the streams for more efficient transportation of the available water in the streams.
  - f. To provide sufficient water flow for the abatement of stream pollution.
  - g. To develop, restore, and stabilize the waters of the state for domestic, agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife conservation by the construction and maintenance of dams, reservoirs, and diversion canals.
  - h. To promote the maintenance of existing drainage channels in agricultural lands and to construct any needed channels.
  - i. To provide more satisfactory subsurface water supplies for the municipalities of the state.
  - j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgment may be necessary and advisable, except the commission may not provide a cost-share for the costs of operation or maintenance, including removal of vegetative materials and sediment, of a water conveyance project.
  - k. To provide for the storage, development, diversion, delivery, and distribution of water for the irrigation of agricultural land and supply water for municipal and industrial purposes.
  - l. To provide for the drainage of lands injured by or susceptible of injury from excessive rainfall or from the utilization of irrigation water, and subject to the limitations prescribed by law, to aid and cooperate with the United States and any department, agency, or officer thereof, and with any county, township, drainage district, or irrigation district of this state, or of other states, in the construction or improvement of such drains.
  - m. To provide water for stock.
  - n. To provide water for the generation of electric power and for mining and manufacturing purposes.
2. To define, declare, and establish rules and regulations:
    - a. For the sale of waters and water rights to individuals, associations, corporations, limited liability companies, municipalities, and other political subdivisions of the state and for the delivery of water to users.
    - b. For the full and complete supervision, regulation, and control of the water supplies within the state.
    - c. Repealed by S.L. 1975, ch. 575, § 2.
    - d. Governing and providing for financing by local participants to the maximum extent deemed practical and equitable in any water development project in which the state participates in cooperation with the United States or with political subdivisions or local entities.
  3. To exercise full power and control of the construction, operation, and maintenance of works and the collection of rates, charges, and revenues realized therefrom.
  4. To sell, lease, and otherwise distribute all waters which may be developed, impounded, and diverted by the commission under the provisions of this chapter, for the purposes of irrigation, the development of power, and the watering of livestock, and for any other private or public use.
  5. To exercise all express and implied rights, power, and authority that may be necessary, and to do, perform, and carry out all of the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith.

6. To acquire, own, and develop lands for irrigation and water conservation and to acquire, own, and develop damsites and reservoir sites and to acquire easements and rights of way for diversion and distributing systems.
7. To cooperate with the United States and any department, agency, or officer thereof in the planning, establishment, operation, and maintenance of dams, reservoirs, diversion and distributing systems, for the utilization of the waters of the state for domestic, municipal, and industrial needs, irrigation, flood control, water conservation, and generation of electric power and for mining, agricultural, and manufacturing purposes, and in this connection the state water commission is hereby authorized, within the limitations prescribed by law, to acquire, convey, contribute, or grant to the United States, moneys, real and personal property, including land or easements for dams and reservoir sites and rights of way and easements for diversion and distribution systems or participate in the cost of any project.
8. To consider cost-sharing for water quality improvement projects.

**61-02-14.1. Release or assignment of easements - Procedure.**

The commission may, when it deems such action to be in the best interests of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful. The commission may also assign such easements to a political subdivision if it determines the assignment would be in the best interests of the state. Any release or assignment shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

**61-02-14.2. Commission contracts may be executed by state engineer.**

The state engineer, or the state engineer's authorized designee, may execute contracts approved by the commission.

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

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

**61-02-15. Provisions of chapter not to limit or deprive state department of health of authority.**

Repealed by S.L. 1975, ch. 575, § 2.

**61-02-16. Preference is given to individual farmer or irrigation district when planning or constructing irrigation projects.**

In planning and constructing irrigation projects, it shall be the policy of the commission to give preference to the individual farmer or groups of farmers or irrigation districts who intend to farm the land themselves.

**61-02-17. Records, accounts, and statements of works and projects undertaken - Filed with office of management and budget.**

The commission shall keep full and complete accounts and records of all matters and things relating to works and projects undertaken, established, and maintained by the commission and shall prepare annual balance sheets, income, and profit and loss statements, showing the financial condition of each project, and shall file copies thereof with the office of management

and budget for public inspection at all reasonable times by any interested parties or citizens of the state.

**61-02-18. Application for irrigation project - Fees to accompany - Surveys made.**

Upon application by any landowner, holder of any easement, or holder of any lease of five or more years' duration, or of any group or association of such landowners, easement holders, or leaseholders for an irrigation project, the commission shall make such preliminary engineering, soil survey, and other investigations as may be necessary to determine the feasibility of any such proposed project. Such applicant shall submit with the application such fees as the commission shall establish for projects of different classes. Following such preliminary survey and upon further application by the applicant, the commission shall enter into a contract with such applicant for a complete engineering, soil survey, and other investigations of said project. The soil survey shall meet such standards as are prescribed by the bureau of chemistry and soils of the federal government and the North Dakota state university of agriculture and applied science. The engineering survey shall be of sufficient detail and quality to enable the applicant to comply with the requirements for obtaining a permit to appropriate water, and to enable any competent contractor to estimate costs and quantities of material needed within reasonable limits, and to install such project without further engineering service. The contract for such engineering service between the applicant and the commission shall require the commission to pay not more than seventy-five percent of the cost of such detailed engineering survey and the drawing of the necessary plans and specifications, with not less than twenty-five percent to be paid by the applicant.

**61-02-19. Works of commission may include preparation of land for irrigation when project undertaken by commission.**

In any irrigation project undertaken by the commission serving a single individual, or a group of individuals owning irrigable lands, the works of the commission may include preparation of the land for irrigation.

**61-02-20. Approval of commission necessary before constructing certain size dams - Inspection during construction.**

Repealed by S.L. 1981, ch. 365, § 8.

**61-02-21. Sewage and waste disposal or discharge - Water supply plant - Approval of commission required.**

Repealed by S.L. 1975, ch. 575, § 2.

**61-02-22. Acquisition of necessary property and power of condemnation.**

The commission has full power and authority to acquire by purchase or exchange, upon such terms and conditions as the commission determines necessary and proper, and by condemnation in accordance with and subject to chapter 32-15 and the provisions of all laws applicable to the condemnation of property for public use, any lands, rights, water rights of whatever character, easements, franchises, and other property determined necessary or proper for the construction, operation, and maintenance of works. This chapter does not require the commission, in condemning any riparian water right, to condemn also the riparian land to which such right may be incident. The title to all property purchased, acquired, or condemned must be taken in the name of the commission and held in trust for, and for the use and benefit of, the people of this state.

**61-02-23. Actions to acquire property rights.**

The commission shall have full power and authority:

1. To institute, maintain, and prosecute to final determination in any of the courts of this or any other state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary:

- a. To enable it to acquire, own, and develop lands for irrigation and water conservation, water distribution, and other necessary purposes. The commission may sell such lands upon such terms and conditions as it may prescribe and may own and hold title to lands for damsites, reservoir sites, water rights, easements, and rights of way for diversion and distributing systems, lateral ditches, and other means for the distribution of waters in this state, and for any other necessary purposes.
  - b. To adjudicate all water rights upon any stream, watercourse, or source of water supply from which are derived the waters for such reservoir, diversion and distributing systems, lateral ditches, and other means of distribution.
2. To join in any action any and all owners of vested water rights acquired by any person, association, corporation, or limited liability company, so that adjudication may be had of all surplus water upon all of the watercourses and sources, water supplies or any project constructed under the supervision and control of the commission.
  3. To join all persons interested as parties in all actions or condemnation proceedings affecting the title of, or holding liens upon, the property sought to be acquired as disclosed by the public records, and the court in such actions or special proceedings shall implead all parties necessary for a full and final determination of all issues upon their merits for the partition and distribution of damages awarded. In the event of controversy between such parties, the court may direct the amount of damages awarded to be paid in or deposited with the clerk of court to abide the result of further appropriate proceedings either in law or in equity. The taking possession of property sought to be condemned shall not be delayed by reason of any dispute between rival claimants or the failure to join any of them as parties to such action or condemnation proceedings.

**61-02-23.1. Condemnation by the water commission.**

Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by chapters 61-24.3 or 61-24.6, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

**61-02-23.2. Devils Lake outlet - Eminent domain - Design and build construction.**

In the construction of an outlet from Devils Lake, the commission:

1. Shall make a reasonable and diligent effort to acquire the property interests needed by negotiation. The commission is deemed to have made a reasonable and diligent effort if it has contacted or attempted to contact the owner of the property interest needed at least three times over a thirty-day period. If the commission is unable to acquire the interest needed by negotiation, then it may take possession of the interests needed after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county in which the property interest is located. The amount of the offer must be at least the average value per acre of comparable property. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to district court by serving notice of appeal upon the commission and the matter must be tried in the manner prescribed under chapter 32-15.
2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter 48-01.2 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design



and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

**61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization - Agreement.**

The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government wherein the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the operation and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and appropriated for the purposes of this section may be used for salaries, equipment, operations, and maintenance costs relating to the Devils Lake outlet.

**61-02-24. Cooperation and coordination with all existing agencies.**

The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:

1. With the United States and any department, agency, or officer thereof.
2. With the states of Minnesota, South Dakota, Montana, and Wyoming, or any political subdivision thereof, and with any other state, and with any department or officer or political subdivision of any state.
3. With Canada or any of its provinces, and with any agency, department, or officer of Canada or any of its provinces.

The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

**61-02-24.1. Cooperation and participation of political subdivisions.**

All political subdivisions, including counties, townships, cities, park districts, and water resource districts may separately or jointly with other political subdivisions, the state of North Dakota through the commission or federal departments or agencies, investigate, plan, and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction, and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the commission to pay rents, charges, or other payments for the use of works of the commission.

**61-02-24.2. Payments in lieu of real estate taxes.**

For land acquired for the Devils Lake project, the state water commission shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in chapter 57-02.1 for payments in lieu of real estate taxes by the state game and fish department.

**61-02-25. Duties of state agencies acting through interstate compacts or agreements.**

Every state officer, department, board, and commission authorized by any law of this state to act upon or to be concerned with any interstate commission involving any interstate compact, or to act upon any foreign commission involving any foreign compact, or with any federal

agency or department of the United States, the subject matter of which in any way concerns or involves water conservation, flood control, irrigation, water pollution or contamination, or the exercise of the powers and duties granted to the commission by this chapter, first shall submit to the commission the plans, purposes, and contemplated action and shall receive the approval of the commission therefor before making any agreement, contract, purchase, sale, or lease, for any of said purposes. The commission may give its aid and assistance to any state agency so acting with respect to any interstate compact.

**61-02-26. Duties of state agencies concerned with intrastate use or disposition of waters.**

Every state officer, department, board, and commission heretofore or hereafter authorized by any law of this state to take any action, perform any duties, or make any contract which concerns the use or disposition of waters, or water rights, within the state first shall submit to the state engineer any plans, purposes, and contemplated action with respect to the use or disposition of such waters, and except as provided in this chapter, shall receive the consent and approval of the state engineer before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under the provisions of this chapter.

**61-02-27. Proposals with respect to use or disposition of waters to be presented to state engineer.**

All persons, including corporations, limited liability companies, voluntary organizations, and associations, when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water or water rights, shall present to the state engineer all proposals with respect to the use or disposition of any such waters before making any agreement, contract, purchase, sale, or lease in respect thereof.

**61-02-28. Plans, investigations, and surveys concerning use of waters - Special powers of commission.**

The commission may make plans, investigations, and surveys concerning the use of any and all waters, either within or without this state, for purposes of establishing, maintaining, operating, controlling, and regulating systems of irrigation, municipal, domestic, industrial, recreational, and fish and wildlife works and projects in connection therewith within the state. The commission shall have all necessary powers of purchasing, selling, leasing, and assigning in accordance with chapter 61-04, rights and interests in the use or in the appropriation of waters for which it has filed a declaration of intent pursuant to section 61-02-30, or obtained a conditional water permit for projects or works and shall possess full authority and jurisdiction to exercise and assert actual control over the corpus of all of such waters, and to regulate the diversion thereof subject to rules and methods prescribed by the commission. This power and authority shall include full right to contract and agree with any person, association, agency, or entity concerning water rights held by such person, association, agency, or entity through which the commission may be given full authority and jurisdiction over such water and water rights. In connection therewith the commission may coordinate, subordinate, supplement, and act jointly or subordinately with the United States, and any agency or department thereof, covering or concerning any federal project affecting water use, works, or projects in connection therewith.

**61-02-29. Commission to have full control over unappropriated public waters of state.**

The commission shall have full control over all unappropriated public waters of the state, whether above or under the ground, for which it has filed a declaration of intention pursuant to section 61-02-30, to the extent necessary to fulfill the purposes of this chapter.

**61-02-30. Commission acquiring water rights and administering provisions of chapter - Declaration of intention.**

In acquiring the rights and administering the terms of this chapter, the commission may initiate a right to waters of this state by executing a declaration in writing of the intention to store,

divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause said notice to be filed in the office of the state engineer. The state engineer shall issue a conditional water permit to the commission consistent with the terms of the declaration of intention, which shall vest in such commission on the date of the filing of such declaration. The commission also shall file in the office of the state engineer copies of its plans and specifications involved in completing any project for the appropriation of water which it intends to construct. Except as provided by this section, water rights shall be acquired by any person, association, firm, corporation, limited liability company, municipality, or state or federal agency, department, or political subdivision in the manner provided by chapter 61-04.

**61-02-31. Priority of a water right dates from when.**

Repealed by S.L. 1983, ch. 676, § 38.

**61-02-32. Modification of plans by commission regarding project to appropriate waters - Filing declaration of intention.**

The commission, if it shall modify its plans in connection with any proposed project concerning which the commission shall have filed a declaration of intention to appropriate waters, shall file in the office of the state engineer a declaration releasing all or part of the waters affected by such declaration.

**61-02-33. Commission to file declaration of completion of appropriation with state engineer.**

Upon completing the construction of works and application to beneficial use of the waters described in the declaration provided in section 61-02-30, the commission shall file in the office of the state engineer a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate and the conditional water permit for such works obtained from the state engineer.

**61-02-34. Declaration of intention to appropriate or release waters or completion of appropriation as evidence.**

A certified copy of the record of the commission's declaration of intention to appropriate waters, or of the release of all or part of said waters, or of the completion of appropriation, shall be received as competent evidence in all courts and shall be deemed prima facie proof of all matters recited therein.

**61-02-35. When right of commission to waters attaches - Continuation of authority and jurisdiction.**

The right of the commission to the waters within this state acquired as provided in this chapter for the purposes defined in this chapter shall attach at and from their source and while flowing in the streams, traveling to the means of control, as well as when actually confined by such means. The authority and jurisdiction of the commission shall continue over such waters after they are released for purposes of use and shall continue to such places of use, and the commission, through and by officers and agents under its authority, may continue to exercise control over such waters and may prevent the diversion thereof without permission first obtained. The commission may reclaim and possess all waters furnished or supplied by it seeping or overflowing from the previous place of use.

**61-02-36. Natural streams employed as a means of diversion of water - Adopting methods to determine natural flow.**

Wherever natural streams are employed as a means of diversion of water from the place of confinement to the place of use, the commission shall adopt proper methods and means of determining the natural flow of such streams when the amount of such natural flow is insufficient to satisfy or fill the needs of appropriators prior in right.

**61-02-37. Headgates and measuring devices maintained by appropriators of natural streams - Commission adopting rules preventing diversion of water.**

All appropriators of the natural flow of natural streams shall maintain headgates and measuring devices at their respective points of diversion for the purpose of enabling the commission or its authorized agents to determine the amount of water being diverted at any time. The commission may adopt and exercise any method or act to prevent the diversion of any waters under its control without permission first obtained.

**61-02-38. Holder of water right on natural stream may turn control over to commission.**

Any holder of a water right on a natural stream may agree with the commission that it shall have control of the diversion of waters due under such right. In such an event, the commission, through its officers and agents, may exercise the same authority over the waters due said appropriator and may cause them to be delivered to the appropriator in the same manner as in case of waters appropriated by the commission.

**61-02-39. Commission may adjust plans and operation of project to obtain financial aid from United States.**

For the purpose of obtaining financial aid from the United States, the commission may adjust the plans and operation of any project created under this chapter to conform to the laws and regulations of the federal government and the supervision of any board, bureau, or commission constituted under such authority and may exercise such powers whenever conferred.

**61-02-40. Authority of commission to extend and be applied to natural waters of state.**

The authority of the commission conferred by the provisions of this chapter shall extend and be applied to any right to the natural flow of the waters of this state which it may acquire by condemnation, purchase, exchange, appropriation, or agreement.

**61-02-41. Surveys for the diversion of waters.**

For the purpose of regulating the diversion of the natural flow of waters, the state engineer may enter upon the means and place of use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

**61-02-42. Commission to take into consideration decrees of court adjudicating waters of natural stream.**

The commission shall take into consideration the decrees of the courts of this state having jurisdiction which purport to adjudicate the waters of any natural stream or its tributaries, and a fair, reasonable, and equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

**61-02-43. Commission may hold hearings relating to rights of claimants - Notice - Findings made.**

The commission may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and it may make findings of the date and quantity of appropriation and use of all claimants, which it shall recognize and observe in diverting the waters which it owns. The commission may police and distribute to the owner of any such recognized appropriation the waters due the owner upon request of such owner and under terms agreed upon.

**61-02-44. Controlling natural flow of stream deemed police power - Water commissioners not to deprive commission.**

The commission, when engaged in controlling and diverting the natural flow of any stream under the authority granted by the provisions of this chapter, shall be deemed to be exercising a

police power of this state. Water commissioners appointed by any court shall not have any authority or jurisdiction to deprive the commission of any of the waters owned or administered under agreement with respective owners, but the owner of any prior or vested right contending that the commission is not recognizing and respecting such right may resort to a court of law or equity for the purpose of determining whether or not the rights of said claimant have been invaded, and the commission shall observe the terms of any final decree.

**61-02-45. Commission may divert at any place on stream after impounding or acquiring the right of appropriation.**

On the commission's impounding or acquiring the right of appropriation of the waters of any stream, it may divert or authorize the diversion at any point on said stream, or any portion thereof, when the same may be done without injury to any prior appropriator or riparian owner whose rights shall not have been acquired by the commission as provided in this chapter.

**61-02-46. Commission may issue bonds - Legislative authorization - Payment restricted.**

1. The commission may provide by resolution, at one time or from time to time, for the issuance of state water development revenue bonds for the purpose of paying the cost of any one or more of the works authorized by this chapter. The commission may provide for the refunding and refinancing of the bonds from time to time as often as it is advantageous and in the public interest to do so.
2. If the principal amount of bonds to be issued for any one works pursuant to this chapter will exceed in the aggregate two million dollars, no bonds may be issued to finance that works unless the legislative assembly authorizes the works and declares the works to be in the public interest.
3. Bonds issued under this chapter shall not be in any way a debt or liability of this state and shall not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all such bonds shall be payable solely from funds or revenues pledged or available for their payment as authorized in this chapter. The bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds or revenues pledged for their payment. Each bond shall recite in substance that the bond, including interest thereon, is payable solely from the funds or revenues pledged to the payment thereof, and that the bond does not constitute a debt of this state or of the commission within the meaning of any constitutional or statutory limit.

**61-02-47. When bonds to mature - Callable before maturity.**

The bonds which may be issued by the commission shall mature at such time or times, either serially or at one time, in not more than forty years from their date, or dates, as may be fixed by the resolution of the commission, but may be made callable before maturity, if so stated in the resolution and on the face of each bond.

**61-02-48. Commission to determine interest rate, form, denomination, and execution of bonds.**

The commission shall determine the rate of interest bonds issued under this chapter shall bear, the time or times of payment of such interest, the form of the bonds, and the manner of executing the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereon, which may be at any bank or trust company within or without this state. The bonds shall be sold at public sale or private sale and at such price or prices as the commission shall determine.

**61-02-49. Officers whose names are on bonds ceasing to be officers before delivery of bonds - Validity of bonds.**

In case any of the officers whose signatures appear on the bonds or coupons provided for in this chapter shall cease to be such officers before the delivery of such bonds, such signatures nevertheless shall be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery.

**61-02-50. Bonds issued are negotiable.**

Repealed by S.L. 1983, ch. 676, § 38.

**61-02-51. How bonds may be secured.**

The bonds provided for in this chapter may be secured by works or lands, and the income derived therefrom, and other funds as the commission may pledge, and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, lands, property, and facilities to be acquired out of the proceeds of the bonds and as provided in this chapter.

**61-02-52. Commission may provide for registration of bonds.**

Provision may be made by the commission for the registration of any of the bonds as provided by chapter 21-03.1.

**61-02-53. Issuance and sale of bonds - Proceeds from sale - Use.**

The bonds authorized under this chapter may be issued and sold from time to time and in amounts determined by the commission. The commission may, subject to the provisions of section 61-02-48, provide for the sale of the bonds in such manner and for such price as it may determine to be for the best interests of the state. The proceeds of the bonds shall be used solely for the payment of the cost of works authorized by this chapter plus costs of issuance, interest during construction, and any reasonably required reserve funds, and shall be paid out in such manner and under such restrictions as the commission may provide.

**61-02-54. Resolution providing for issuance of bonds.**

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

**61-02-55. Issuance of temporary bonds.**

Prior to the preparation of definitive bonds, the commission may issue or provide for the issuance of temporary bonds, exchangeable for definitive bonds when the definitive bonds have been executed and are available for delivery. Temporary bonds may be issued without any other proceedings or the happening of any other condition or thing specified and required by this chapter, except that if legislative authorization is required for the issuance of the definitive bonds pursuant to section 61-02-46, the authorization must be received before the temporary bonds may be issued.

**61-02-56. Bond guaranty or insurance - Method.**

Whenever the commission shall find it necessary to insure or guarantee the payment of all or a part of the principal or interest of any series of bonds, it may enter into an agreement to place under trust indenture or agree to deposit in a trust fund moneys now or hereafter appropriated, to guarantee and insure the payment of the interest on and principal of the bonds. From and with moneys thus appropriated, the commission may guarantee or insure, or agree to pay, or pay the interest on and principal of the bonds. The appropriation of such funds, and the use thereof by the commission to guarantee or insure the payment of any of its bonds, shall not be construed to be pledging the credit of the state of North Dakota nor the guaranteeing by the state of any bonds. The commission may also enter into an agreement with a private bond

insurer or with a bank or other credit enhancement provider for bond insurance, a guaranty, a letter of credit, or any other credit enhancement that the commission may find to be advantageous or necessary to insure or guarantee the payment of the interest on or the principal of the bonds. The cost of any credit enhancement may be paid with bond proceeds or other funds available for that purpose.

**61-02-57. Moneys appropriated to pay interest and principal of bonds available as a revolving fund.**

Moneys appropriated to enable the commission to guarantee the payment of the interest or principal of its bonds shall be available to the commission as a continuing revolving fund, and moneys so appropriated, and any unexpended balances thereof, including interest on the moneys and unexpended balances, shall not revert to the state general fund at the end of any biennial fiscal period but shall be available for use by the commission to insure and guarantee the payment of, or pay, to the extent provided in this chapter, the interest and principal of its bonds until otherwise required by law.

**61-02-58. Lien upon bond proceeds.**

All moneys received from bonds of any series issued pursuant to this chapter shall be used solely for the purpose of paying the cost of the works or projects for the construction of which the bonds have been issued, or for the purpose of paying costs of issuance, interest during construction, and establishing any reasonably required reserve funds. There shall be a lien upon such moneys, until so used in favor of the holders of the bonds or the trustee provided for in this chapter in respect to the bonds.

**61-02-59. Series of bonds may be secured by trust indenture.**

In the discretion of the commission, any series of bonds may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state.

**61-02-60. Trust indentures - Where filed - Filing constitutes constructive notice.**

Each trust indenture, or an executed counterpart thereof, shall be filed in the office of the secretary of state. The filing of a trust indenture, or an executed counterpart thereof, in the office of the recorder of the county in which the property covered by said trust indenture is located shall constitute constructive notice of the contents thereof to all persons from the time of such filing, and no recording of such trust indenture or the contents thereof shall be necessary.

**61-02-61. Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture.**

Either the resolution providing for the issuance of bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper. No enumeration of particular powers granted may be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out the provisions of the resolution or trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the works affected by the resolution or trust indenture.

**61-02-62. Powers of commission in issuance of bonds.**

In connection with the issuance of any bonds for the purpose of paying in whole or in part, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of any works or project, or in order to secure the payment of the bonds, the commission may:

1. Pledge all or any part of the income, profit, and revenue of the works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of the works or project, or other funds as the commission may determine.

2. Covenant against pledging all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale, or other disposition of all or any part of the works or project.
3. Covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien thereon.
4. Covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project as to provide at all times funds together with other funds the commission may pledge which will be sufficient:
  - a. To pay all costs of operation and maintenance of the works or project, as permitted under this chapter, together with necessary repairs thereto;
  - b. To meet and pay the principal and interest of all the bonds as they severally become due and payable; and
  - c. To create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation, repair, replacement, and maintenance of the works or project as the commission shall determine.
5. Make such further covenants as to prices, rates, and charges as the commission shall determine.
6. Create special funds, in addition to those required by this chapter, for the meeting of contingencies in the operation and maintenance of the works or project and to determine the manner in which, and the depository or depositories in which, the funds shall be deposited and the manner in which the same shall be secured. Any bank or trust company incorporated under the laws of this state may act as the depository and shall furnish such indemnifying bonds or pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars.
7. Provide for the replacement of lost, destroyed, or mutilated bonds.
8. Covenant against extending the time for the payment of the principal or interest on any bonds, directly or indirectly, by any means or in any manner.
9. Prescribe and covenant as to the events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared, due before maturity, and as to the terms and conditions upon which a declaration and its consequences may be waived.
10. Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
11. Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee, or trustees, and limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or exercise the right of foreclosure.
12. Make covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds, or, in the absolute discretion of the commission, to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated or expressly authorized in this chapter.
13. Do all things in the issuance of the bonds, and in providing for their security, that may not be inconsistent with the Constitution of North Dakota.

**61-02-63. Mortgage of commission - Contents - Purchaser at foreclosure sale - Rights.**

Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project financed with bonds issued by the commission as authorized by this chapter shall obtain title to the works or project free from any trust or other obligation of the commission, the state of North Dakota, or the public thereof, as to its operation, maintenance, use, or disposition except the



obligation to use all water impounded in the works or project for sale, rental distribution, or other beneficial use.

**61-02-64. Fund created by commission - Depository.**

The commission shall have a fund to be known as the "contract fund". The moneys in the contract fund shall be deposited in the state treasury. The contract fund shall have such accounts as the commission may determine. The use or disposition of such accounts, including the pledging thereof for the security of and payment on one or more series of bonds, shall be determined by the commission.

**61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer.**

Unless otherwise provided under the terms of a bond resolution or trust indenture adopted by the commission pursuant to this chapter, all contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any office supplies, materials, and equipment, must be paid from the contract fund. The moneys in the contract fund must be paid out or disbursed in the manner determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, must be held pursuant to the terms of the resolution or trust indenture adopted by the commission pursuant to this chapter or deposited with the state treasurer. Moneys deposited with the state treasurer are appropriated to the commission and must be credited to the contract fund.

**61-02-64.2. Repayment of loan proceeds and reimbursements deposited in resources trust fund.**

Notwithstanding section 61-02-64.1, any repayment made after January 1, 1991, of any loans disbursed from the contract fund or resources trust fund and any moneys paid to the state or the commission after January 1, 1991, to reimburse the commission for moneys, other than bond proceeds, used for municipal, rural, and industrial water supply projects must be deposited in the resources trust fund in the state treasury.

**61-02-65. Commission to have complete system of accounting - Contents.**

The commission shall have a complete system of accounting to show the total expenditure of and investment in each project and the total revenue derived therefrom and shall prepare periodic reports giving the financial statement of each project and the status of all projects together.

**61-02-66. Construction fund - Contents - Disbursements - Surplus remaining.**

Repealed by S.L. 1995, ch. 588, § 18.

**61-02-67. Revenue bond payment fund - Contents.**

Repealed by S.L. 1995, ch. 588, § 18.

**61-02-67.1. Revenues and funds available to pay bonds.**

Bonds issued under this chapter are payable solely from:

1. Revenues to be received by the commission from the operation of a works financed with the bonds.
2. Any other revenues available to the commission.

**61-02-68. State treasurer to pay interest on bonds - Redemption of bonds - Appropriation.**

Repealed by S.L. 1995, ch. 588, § 18.

**61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes.**

The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes", unless the context otherwise requires, may be used in sections 61-02-68.1 through 61-02-68.19 in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with construction period financing. The construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

**61-02-68.2. Interim financing notes guaranteed by United States agency or instrumentality - Limitations.**

In addition to its other powers, the commission may enter into interim financing and loan agreements with any owner or owners to loan the proceeds of the commission's interim financing notes to any owner or owners for works or projects authorized by this chapter anywhere within this state and to adopt the necessary resolution therefor, without regard to the limitations, provisions, or requirements of any other law, except those of this chapter. Before any such agreement can be entered into, an agency or instrumentality of the United States government, including the farmers home administration or the old west regional commission, or any agency of this state, including the Bank of North Dakota, must have committed itself to make a grant or loan to such owner or owners. Under this section, the commission may only provide interim financing less than or equal to the federal or state grant or loan commitment on each project and may not apply the proceeds of such notes and financing to any purpose other than expenses allowed by section 61-02-68.1 and the project or works for which the loan agreement is made. Notes authorized by sections 61-02-68.1 through 61-02-68.13 shall not be considered revenue bonds under section 61-02-46, and the proceeds of any such notes shall not be part of any commission fund as enumerated in section 61-02-64, and need not be deposited in the state treasury.

**61-02-68.3. Interim financing - Proper authority required.**

Before entering into any loan agreement under section 61-02-68.2, the commission shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes, and other documents, or by other sufficient means that the owner or owners receiving such interim financing have the authority and power to construct the project or works, borrow these funds, and enter into the loan agreement. The commission shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been followed or properly performed.

**61-02-68.4. Interim financing - Independent review of feasibility of project.**

Before issuing any interim financing notes pursuant to section 61-02-68.1, the commission shall conduct a review of the feasibility of the project or works to ensure that projected water consumption, operating costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings.

**61-02-68.5. Interim financing - Proceeds pledged as security - Assignment to commission of rights to proceeds.**

Any interim financing agreement pursuant to section 61-02-68.2 shall provide that the owner or owners receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States or the state as security for the interim financing notes issued pursuant to the loan agreement. In addition, the execution of any interim financing agreement under section 61-02-68.2 shall constitute an assignment to the commission of the right to receive the proceeds of the federal or state loan or grant so far as is necessary to secure the notes issued pursuant to the agreement and in preference to any other obligation

whatsoever of the owner or owners receiving the interim financing. It shall not be necessary for the financing agreement, trust indentures, or any other document relating to the interim financing agreement to be filed or recorded in order for the assignment to the commission to be perfected.

**61-02-68.6. Terms of interim financing notes - Extension of maturity dates.**

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

**61-02-68.7. Pledge of revenues to secure interim financing notes.**

All interim financing notes and the interest thereon must be secured by a pledge of, and be payable from, any grant or loan to be made by an agency or instrumentality of the United States government or the state of North Dakota, as specified in section 61-02-68.2, and in connection with such project or works.

**61-02-68.8. Additional covenants and conditions to secure interim financing notes.**

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

**61-02-68.9. Registration of interim financing notes - Interest payment - Redemption prior to maturity.**

The commission may provide for the registration of interim financing notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the commission may determine by the resolution authorizing their issue. Interest on the notes may be made payable semiannually, annually, or at maturity, however, the first interest payment period may be less than six months. The notes may be made redeemable, prior to maturity, at the option of the commission, in the manner and upon the terms fixed by the resolution authorizing their issuance.

**61-02-68.10. Execution and attestation of interim financing notes - Sale.**

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

**61-02-68.11. Bond provisions applicable to interim financing notes.**

The provisions of sections 61-02-49, 61-02-59, 61-02-60, 61-02-61, 61-02-62, and 61-02-65, relating to bonds also apply to notes issued pursuant to section 61-02-68.1.

**61-02-68.12. Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien.**

Interim financing notes issued by the commission under this chapter or guarantees provided under section 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, or 61-02-68.19 are not a debt or liability of this state and do not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all notes or guarantees are payable solely from funds pledged or available for their payment as authorized in this chapter. The notes or guarantees do not constitute a charge, lien, nor encumbrance, legal or equitable, upon any

property of the commission, other than funds received pursuant to an interim financing agreement.

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

**61-02-68.13. Interim financing notes as legal investments and security.**

Notwithstanding any restrictions contained in any other law, this state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any interim financing notes issued by the commission pursuant to this chapter, and the notes are authorized security for any and all public deposits.

**61-02-68.14. Guarantee issued by commission.**

The commission may guarantee evidences of indebtedness issued or other obligations undertaken by the owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418], or evidences of indebtedness issued or other obligations undertaken by a not-for-profit organization establishing a financing program for the owners of the water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] for the purpose of providing the owners with construction period financing. Construction period financing may include the cost of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance. A commission guarantee of indebtedness or other obligations of an owner of a water project must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

**61-02-68.15. Pledges.**

The commission may pledge the municipal, rural, and industrial water supply funds authorized by Pub. L. 99-294 [100 Stat. 418] as security for a guarantee or note. A pledge is valid and binding whenever the pledge is made. The revenues or other moneys pledged and thereafter received by the commission are immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind against the commission, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the commission.

**61-02-68.16. Reserve fund.**

1. The commission shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the legislative assembly for the purpose of the fund, all proceeds of notes issued or guaranteed by the commission required to be deposited in the fund by terms of a contract or a resolution of the commission with respect to the proceeds of notes, any moneys or funds of the commission that it determines to deposit in the fund, any moneys made available to the commission for the purposes of the fund from any other source, and any contractual right to the receipt of moneys by the commission for the purpose of the fund, including a letter of credit or similar instrument. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of notes and sinking fund payments as they become due and payable and for the retirement of notes, including payment of any redemption premium required to be paid when any notes are redeemed or retired before maturity, and for the payment of principal and interest on evidences of indebtedness or obligations guaranteed by the commission. Moneys in the reserve

fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of the interest due and payable on notes and the principal of notes maturing and payable and sinking fund payments and for the retirement of notes in accordance with the terms of a contract between the commission and its noteholders, for the payment of principal and interest on evidences of indebtedness or obligations of an owner of water projects for which a guarantee has been issued by the commission, and for payment of interest or principal or sinking fund payments or retirement of notes or draws upon a guarantee, for which other moneys of the commission are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the commission unless the commission has determined that notes of the commission cannot be issued under acceptable terms for the payment of the guarantee or that the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the commission and its noteholders to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding notes and the payment required by the terms of any contract to a sinking fund established for the payment or redemption of the notes.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the notes to be taxable under the Internal Revenue Code, then at the discretion of the commission a reserve fund does not need be established before the issuance of notes or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. Notes may not be issued by the commission unless there is in the reserve fund the required debt service reserve for all notes then issued and outstanding and the notes to be issued. This chapter does not prevent or preclude the commission from satisfying this requirement by depositing so much of the proceeds of the notes to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The commission may issue its notes for the purpose of providing an amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve as may be fixed by the commission with respect to the fund.
4. In order to assure the maintenance of the required debt service reserve, there must be appropriated by the legislative assembly and paid to the commission for deposit in the reserve fund any sum certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve or to maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the commission. The commission may approve a resolution for the issuance of notes, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for notes issued under that resolution.
5. If the maturity of a series of notes of the commission is not more than three years from the date of issuance of the notes, the commission may determine that no reserve fund need be established for that respective series of notes or that the reserve fund may be in an amount less than the required debt service reserve. If the determination is made, holders of that respective series of notes do not have an interest in or claim on existing reserve funds established for the security of the holders of previously issued commission notes, and do not have an interest in or claim on reserve funds established for the holders of subsequent issues of notes of the commission.

**61-02-68.17. Additional reserves and funds.**

The commission may establish additional and further reserves or other funds or accounts as may be necessary, desirable, or convenient to further the accomplishment of the purposes of the commission to comply with the provisions of an agreement made by or a resolution of the commission.

**61-02-68.18. Protection of service during term of guarantee or loan.**

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. The owners of water projects providing the service may not be required to obtain or secure a franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another owner of a water project during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two owners of water projects and the commission or other state entity from negotiating an agreement for the right or obligation to provide the service in question, provided that an agreement is invalid unless the commission or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding notes of the commission issued to fund the loan.

**61-02-68.19. Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest.**

Guarantees made under section 61-02-68.14 or bonds or interim notes issued under this chapter for the purpose of providing construction period financing for owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

**61-02-69. Property of commission exempt from taxation.**

All the property of the commission shall be exempt from taxation.

**61-02-70. Expenses paid from administrative fund.**

Repealed by S.L. 1965, ch. 447, § 24.

**61-02-71. Commission may accept and receive appropriations and contributions.**

The commission may receive and accept appropriations and contributions from any source, either of money or property or things of value, to be held, used, and applied for the purposes provided for in this chapter.

**61-02-72. Revenue bonds of commission are legal and valid investments of financial institutions - Exemption from taxation.**

Notwithstanding any restrictions 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 all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the commission pursuant to this chapter, and the bonds are authorized security for

public deposits. The bonds, and the interest thereon, are exempt from all state, county, and municipal taxes.

**61-02-73. Construction of chapter.**

Nothing contained in this chapter shall be deemed to interfere with any vested rights to the use of water. This chapter being necessary for the welfare of the state and its citizens, it shall be construed liberally to effect the purposes thereof.

**61-02-74. Certain moneys to be deposited in general fund.**

Repealed by S.L. 1971, ch. 587, § 1.

**61-02-75. Hearing witnesses - Subpoena - Oath - Fees.**

Repealed by S.L. 1987, ch. 739, § 1.

**61-02-76. Hearing - Appeals from decision of commission.**

Except as more specifically provided in this title, any person aggrieved because of any action or decision of the commission under the provisions of this title has the right to a hearing by the commission if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved has the right to petition for reconsideration and to appeal, all in accordance with the provisions of chapter 28-32.

**61-02-77. Emergency municipal, tribal, and rural water system drinking water grant program.**

The commission may establish an emergency municipal, tribal, and rural water assistance program for municipalities, tribes, and rural water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe. The commission may establish procedures, cost-share guidelines, and other criteria for municipalities, tribes, and rural water systems that request emergency assistance due to low water conditions on the Missouri River, Lake Sakakawea, or Lake Oahe. The purpose of this program is to provide emergency grant funds to municipalities, tribes, and rural water systems facing a critical need or health risk as a result of the inability of the water intake system for the municipal, tribal, or rural water system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

**61-02-78. Infrastructure revolving loan fund - Continuing appropriation - Rules.**

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

4. Annually the Bank of North Dakota may deduct a service fee of one-half of one percent for administering the infrastructure loan fund.
5. Projects not eligible for the state revolving fund will be given priority for these funds.

**61-02-79. Bank of North Dakota - Line of credit.**

The Bank of North Dakota shall extend a line of credit not to exceed seventy-five million dollars at a rate of one and one-half percent over the three month London interbank offered rate, but may not exceed three percent to the state water commission. The state water commission shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly for water supply projects approved before June 30, 2019, and flood control projects that have approval for funding before June 30, 2019.

**61-02-80. Flood control projects - Financial assistance limited.**

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

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

**61-02-81. Development in breach inundation zones - No financial assistance for dam improvements.**

Notwithstanding any other provision of law, if a political subdivision permits building or development within a breach inundation zone and the building or development causes a change in a dam's current hazard classification necessitating structural improvements or upgrades to the dam, the political subdivision shall pay for the necessary improvements or upgrades. State loans, grants, cost-share, and other financial assistance may not be provided to pay for the dam improvements or upgrades. For purposes of this section, "breach inundation zone" means the area downstream of the dam which would be flooded in the event of a dam failure or uncontrolled release of water.