

CHAPTER 61-05 ORGANIZATION OF IRRIGATION DISTRICTS

61-05-01. Definitions.

As used in this chapter and in succeeding chapters dealing with irrigation districts:

1. "Board" means the board of directors of any irrigation district.
2. "Elector" means any landowner owning not less than five acres [2.02 hectares] of land whose land will be or is subject to assessments for construction or other costs, within a proposed or existing irrigation district, and who is a resident of this state. As herein used the term "owner" means an owner in fee simple and also includes:
 - a. An entryman of government land.
 - b. A purchaser of land under contract.
 - c. A guardian, executor, administrator, or trustee.
 - d. A corporation organized and existing under the laws of this state.
 - e. A limited liability company organized and existing under the laws of this state.
 - f. The United States of America and the state of North Dakota.
3. "Irrigable acres" or "irrigable lands" means those lands which can or will be served by the district's works, as determined by the state engineer before the district is organized, or as determined from time to time by the district's board of directors. Whenever land or acreage is described as being susceptible of irrigation or subject to assessment, it means the same as irrigable acres.
4. "Works" includes canals, ditches, pipelines, and other conveyance systems, pumping plants, rights of way, easements, reservoirs, dams, well fields, and other works for the appropriation of water and the necessary sites for pumping plants, reservoirs, dams, well fields, and all means and property required for a completed operating system of irrigation works.

61-05-02. Proposals for irrigation district - Electors required.

Whenever a majority of the electors within an area containing eighty acres [32.37 hectares] or more of land, susceptible of irrigation, desire to provide for the irrigation of such land, they may propose the organization of an irrigation district under the provisions of this chapter. When so organized, the district shall have the powers conferred or that may be conferred by law upon irrigation districts. No district, when so organized, shall contain less than five electors, as the term elector is defined in this chapter. Where irrigation works, ditches, or canals have been constructed prior to July 1, 1941, of sufficient capacity to irrigate the lands thereunder for which the water taken in such canals or ditches is appropriated, such canals or ditches and the franchises under which the same are maintained and operated, and the lands irrigated by such canals or ditches, shall be exempt from the operation of the provisions of this chapter, unless such irrigation district is created to acquire and own such irrigation works, canals, ditches, water rights, and franchises.

61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.

Notwithstanding section 61-05-02, an irrigation district may not be created if the primary purpose of the district is to provide drainage benefits to residents of the district. A drainage project proposed, undertaken, approved, or subject to assessment by an irrigation district also is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an irrigation district may not impact the authority of a water resource board to assess for drainage projects under chapter 61-16.1 or 61-21.

61-05-03. Votes of electors - Number permissible.

Any elector owning twenty acres [8.09 hectares] or less but not less than five acres [2.02 hectares], subject to assessments for construction or other costs within a proposed or existing district, shall have one vote. Any elector owning more than twenty acres [8.09 hectares] subject to such assessments within any irrigation district which will receive all or a portion of its water supply from a federal reclamation or irrigation project shall have one additional vote for each

additional twenty acres [8.09 hectares] or major fraction thereof. However, the total votes any elector is entitled to must be determined based on the number of acres [hectares] the elector is entitled to irrigate pursuant to the Reclamation Reform Act of 1982 [Pub. L. 97-293; 96 Stat. 1263; 43 U.S.C. 390aa et seq.] and may not exceed more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres [hectares] of land owned by the elector in the district. Any elector owning more than twenty acres [8.09 hectares] subject to assessments within any existing or proposed irrigation district which does not receive any of its water supply from a federal reclamation or irrigation project shall have one additional vote for each additional twenty acres [8.09 hectares] or major fraction thereof, but no elector shall be entitled to cast more than thirty-five percent of the total votes eligible to be cast in any district election regardless of the number of acres [hectares] of land owned by the elector in the district.

61-05-04. Fiduciary must file proof of authority - Appointment of agent.

A guardian, executor, administrator, or trustee shall present to and file with the clerk of the irrigation district election board a certified copy of the person's or corporation's letters of guardianship, letters testamentary, or letters of administration, or of the instrument creating the trust, as the case may be. Any such guardian, executor, administrator, or trustee, whether an individual or a corporation, by an instrument in writing, duly acknowledged, may designate an agent to vote in the person's or corporation's behalf. Such instrument appointing such agent shall be presented to and filed with the clerk of the district election board by such agent.

61-05-05. Co-owners of land in irrigation district - Who may vote.

Where lands within a proposed or existing irrigation district are owned by co-owners only, such co-owners who are residents of this state may vote their respective interest personally, or such co-owners by an instrument in writing, may designate one of their number as agent to cast the vote for each such co-owner. Provided, that in no event shall any such co-owner be entitled to cast, less than one full vote, or any vote or votes constituting any fraction of one vote. Such instrument shall be acknowledged by such co-owners and shall be presented to and filed with the clerk of the district election board.

61-05-06. Private or public corporation or limited liability company may designate agent to vote.

Where lands which are within a proposed or existing irrigation district are owned by a corporation or a limited liability company, by the United States, or by this state, such corporation or limited liability company, and any department or agency of the United States or of this state, in order to participate in any district election, by an instrument in writing, executed and acknowledged by the proper officer or officers of such corporation, department, or agency, or by the proper manager or managers of such limited liability company, shall designate an agent to vote in its behalf. Such instrument shall be presented to and filed with the clerk of the district election board by such agent.

61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom - Contents.

A petition for a proposed irrigation district shall be filed with the state engineer and shall be signed by landowners of the proposed district who together shall own a majority of the whole number of acres [hectares] subject to assessment for construction or other costs within the district requesting the territory described in such petition be organized under the provisions of this chapter. Such territory shall be described and shall be included in such district, if established, by legal governmental subdivisions of forty acres [16.19 hectares] or more unless held in fractional lots or plotted units of lesser size, or unless portions thereof are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands which are not contiguous to any other lands in the proposed district. Such petition shall set forth the name and address of each petitioner and a description of the

petitioner's land, and the petition shall have attached thereto a map or maps showing the boundaries of the proposed district.

61-05-08. Petition accompanied by map - Contents - Scale.

The petition provided for in section 61-05-07 shall be accompanied by a map or maps of the proposed district. The map shall show the location of the proposed conveyance systems and other works by means of which it is intended to irrigate the lands of the proposed district. If the water supply is from a natural stream, the flow of such stream shall be stated in cubic feet [meters] per second. If the water supply for the district is to be gathered by a storage reservoir or reservoirs, the map shall show the location thereof and shall state their capacity in acre-feet. If the water supply is from a ground water source, the map must show the general location of wells and proposed pumping rates. Unless otherwise permitted by the state engineer, such map shall be drawn to a scale of not less than two inches [5.08 centimeters] to the mile [1.61 kilometers]. Preliminary designs of all proposed conveyance systems and other works shall be prepared in sufficient detail to show the contemplated method of construction, along with a feasibility report on the proposed plan of irrigation. The feasibility report must include an analysis of the soil and water compatibility of the irrigable lands of the proposed district. A registered professional engineer shall prepare the map, preliminary designs, and feasibility report required by this section.

61-05-09. Petition accompanied by bond - Approval of bond - Certified copy of petition filed.

Unless otherwise permitted by the state engineer, the petition shall be accompanied by a good and sufficient bond to be approved by the state engineer, which shall be in double the amount of the probable cost of organizing such district, including the cost of the first election for the organization of the district and shall be conditioned that the sureties will pay all costs in case said organization shall not be approved by the electors. Within ten days after the filing of such petition, and the approval of such bond, the state engineer shall file a copy of such petition with the county auditor of each county wherein the proposed irrigation district is situated.

61-05-10. Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors.

The state engineer shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing such petition. A notice stating that such petition will be heard, and stating the time and place of hearing, shall be filed with the county auditor of each county wherein such proposed district is located. The notice shall be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the hearing on the petition may not be less than twenty days after the first publication of the notice. Prior to such hearing the state engineer shall review the maps, preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a summary report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within such district. A copy of such report shall be filed with the county auditor of each county wherein the proposed irrigation district is situated and such report shall be open to public inspection. The state engineer also shall submit such report to the electors of the proposed district at the meeting set for hearing the petition for the organization thereof.

61-05-11. Amendment of plan of irrigation - Adjournment of hearing by state engineer.

At the hearing provided in section 61-05-10, the state engineer may amend the plan of irrigation proposed in the petition provided in section 61-05-07. The state engineer may adjourn such hearing from time to time and may make such changes in the proposed boundaries of the district as the state engineer shall deem advantageous and advisable, but the boundaries of the district proposed in the petition for its organization shall not be enlarged or extended until the

electors who own a majority of the acres [hectares] of land subject to assessments for construction or other costs to be included in the extension having in writing consented thereto.

61-05-12. State engineer may make order denying petition - Filing.

If the state engineer shall determine that the plan of irrigation proposed is not practicable or that such plan is not economically sound, the state engineer shall make an order denying the petition for the organization of an irrigation district and shall state the reasons for the action. A copy of such order shall be filed with the county auditor of each county in which the proposed irrigation district is situated.

61-05-13. State engineer to make order establishing irrigation district - Calling election - Dividing district - Contents of order.

If the state engineer finds and determines that the establishment of the proposed irrigation district is advisable, and that the plan proposed for irrigating the lands therein is practicable and economically sound, the state engineer shall make an order establishing the irrigation district, subject to the approval of the electors of the district at an election called by the state engineer for that purpose. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable hectares] of land, the state engineer by the order shall divide the district into five or seven divisions or precincts as the state engineer determines necessary for the convenience of the electors of the district. The divisions or precincts must be as nearly equal in size as may be deemed practicable, the divisions must be numbered, and one director must be elected from, and by the electors of, each division. If an elector owns land in more than one division, the elector must cast all the elector's votes for director and be eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies. The order must set forth:

1. The time and place of holding the election.
2. The boundaries of the district.
3. That a petition sufficient in form and substance was filed with the state engineer.
4. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.

A copy of the order must be filed with the county auditor of each county in which the irrigation district is situated. The order is prima facie evidence of the matter and facts therein stated.

61-05-14. Notice of election by state engineer - Contents - Publication.

Upon making an order establishing an irrigation district, the state engineer shall give notice of an election to be held in such district for the purpose of determining whether or not the electors of the district approve the establishment and organization thereof as an irrigation district. The notice shall state that an elector desiring to be a candidate for the office of district director shall file the elector's name with the state engineer not less than twenty days before such election. The notice shall carry a reference to the map or maps previously filed with the county auditor describing the boundaries of the lands included in the district as established by the state engineer and shall designate a name for such district. The notice shall be filed with the county auditor of each county in which the proposed district is situated and shall be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the election shall be not less than twenty-five, nor more than thirty-five, days after the first publication of the notice.

61-05-15. Form of notice of election.

The notice of election provided for in section 61-05-14 must be substantially in the following form:

NOTICE OF ELECTION

Notice is given that on _____, _____, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the state engineer as _____ irrigation district, the question as to whether the order of the

state engineer establishing the irrigation district is approved. Notice is given that the lands of the district are fully described in the order of the state engineer establishing the district and filed in the state engineer's office in Bismarck, North Dakota, and in the office of the county auditor of _____ County, North Dakota. The ballot must be in the following form:

FOR IRRIGATION DISTRICT

Yes

No

Notice is further given that a board consisting of _____ directors will be elected, one from each district division, who will serve as provided by law after the establishment of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and have the elector's name appear on the ballot must file the elector's request in writing with the state engineer not less than twenty days before the election.

Dated _____, _____.

Signed _____
State Engineer

61-05-16. State engineer to appoint clerk and two judges of election - Filling vacancies on board.

Prior to the holding of an election upon the question of establishing and organizing an irrigation district, the state engineer shall appoint from the electors of the district one clerk and two judges who shall constitute a board of election for such district. If the district is divided into divisions or precincts, such board of election shall be appointed from the electors of each such division and shall serve as a board of election therein. If the members appointed do not attend at the opening of the polls on the day of election, the electors present at that hour may choose the members of the election board or fill the place of an absent member thereof.

61-05-17. Conduct of election - Votes canvassed by board and state engineer - Retaining ballots.

An election upon the question of organizing an irrigation district shall be conducted in accordance with the general election laws of the state. After the polls are closed, the election board shall proceed to canvass the votes cast thereat, and the clerk of the election board shall certify to the state engineer the result of such election. The clerk of the board then shall wrap securely the ballots cast at such election and shall express or mail the same by registered or certified mail to the state engineer who also shall canvass the ballots and verify the result. The state engineer shall file and retain in the state engineer's office the ballots cast at such election.

61-05-18. Election governing organization of district - Filing record of election - Certificates of election to directors.

If, upon a canvass of the votes cast and after such canvass has been verified by the state engineer it appears that a majority of all votes cast are in favor of the organization of an irrigation district, the state engineer, by an order, shall declare such territory duly organized as an irrigation district under the name and style designated and shall declare the persons receiving the highest number of votes duly elected as directors. The state engineer shall cause a copy of such order, duly certified, to be filed immediately for record in the office of the recorder of each county in which any portion of the irrigation district is situated and also shall file a copy of such order with the county auditor of each such county, and from and after the date of such filing, the organization of such district shall be complete. The state engineer immediately shall make out and mail, by registered or certified mail, to each person elected to the office of director a certificate of election signed by the state engineer. The directors thereupon shall enter upon the duties of their office.

61-05-19. State engineer to file order with secretary of state - Secretary of state to make certificate - Evidence.

The state engineer shall file in the office of the secretary of state a copy, duly certified by the state engineer, of the state engineer's order declaring any territory to be duly organized as an irrigation district, and the secretary of state shall make and issue to the state engineer a certificate under the seal of the state, of the due organization of such district and shall file a copy of such certificate and the said order of the state engineer. Such certificate of the secretary of state, or a copy thereof, authenticated by the secretary of state, shall be prima facie evidence of the organization and existence of such irrigation district.

61-05-20. Appeal to district court from orders and decisions of the state engineer - Time - Undertaking.

An appeal may be taken to the district court from any order or decision of the state engineer by any person who is aggrieved thereby, at any time within thirty days after the order or decision appealed from has been filed with the county auditor of the county in which the appeal is taken. Such appeal shall be taken by serving notice of appeal on the state engineer and by filing the notice of appeal, proof of service thereof, and the undertaking required in this section with the clerk of the district court of the county in which the appeal is taken. To effect an appeal an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against the appellant in the district court. Such undertaking shall be made in favor of the state engineer as obligee and may be enforced by the state engineer. The appeal shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated and if such land is situated in more than one county, such appeal may be taken to the district court of any county in which any part of such land is situated. Any appeal thus taken shall be docketed in the district court as any civil cause commenced in the district court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause, and shall hear and determine the same, without a jury, in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the state engineer or any other party to the cause from any judgment entered in the district court in any such cause, and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

61-05-21. Validating organization and acts of irrigation districts.

Nothing contained in this chapter shall be construed as impairing, invalidating, or in any manner affecting the validity of acts or proceedings of irrigation districts organized pursuant to the provisions of chapter 38 of the Code of Civil Procedure of the Supplement to the Compiled Laws of 1913 and prior to March 16, 1939. The organization of any irrigation district prior to March 16, 1939, in substantial compliance with the provisions of this chapter, hereby is declared to be a valid and legal district, and all acts and proceedings of such district, and of the board of directors thereof, done and performed in substantial compliance with the provisions of this title hereby are validated and hereby are declared legal and valid.