

## **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 department of water resources 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 must be filed with the department of water resources and signed by landowners of the proposed district who together 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 the petition be organized under the provisions of this chapter. The territory must be described and included in the 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 of the territory are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands that are not contiguous to any other lands in the proposed district. The petition must include the name and address of each petitioner and a description of the petitioner's land, and a map or maps showing the boundaries of the proposed district must be attached to the petition.

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

The petition provided for in section 61-05-07 must be accompanied by a map or maps of the proposed district. The map must show the location of the proposed conveyance systems and other works intended to be used to irrigate the lands of the proposed district. If the water supply is from a natural stream, the flow of the stream must be stated in cubic feet [meters] per second. If the water supply for the district is to be gathered by a storage reservoir, the map must show the location of the storage reservoir and state the reservoir's 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 department of water resources, the map must 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 must 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 department of water resources, the petition must be accompanied by a good and sufficient bond to be approved by the department of water resources. The bond must be in double the amount of the probable cost of organizing the district including the cost of the first election for the organization of the district. The bond also must be conditioned that the sureties will pay all costs in case the organization is not approved by the electors. Within ten days after the filing of the petition, and the approval of the bond, the department of water resources shall file a copy of the petition with the county auditor of each county in which the proposed irrigation district is situated.

**61-05-10. Hearing on petition - Notice - Report on feasibility - Copy of report filed - Submitted to electors.**

The department of water resources shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing the petition. A notice stating the petition will be heard, and stating the time and place of hearing, must be filed with the county auditor of each county in which the proposed district is located. The notice must be published once each week for two consecutive weeks in the 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. Before the hearing the department 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 the district. A copy of the report must be filed with the county auditor of each county in which the proposed irrigation district is situated, and the report must be open to public inspection. The department of water resources also shall submit the report to the electors of the proposed district at the meeting set for hearing the petition for the organization of the proposed district.

**61-05-11. Amendment of plan of irrigation - Adjournment of hearing by department of water resources.**

At the hearing provided in section 61-05-10, the department of water resources may amend the plan of irrigation proposed in the petition provided in section 61-05-07. The department may adjourn the hearing from time to time and may make changes in the proposed boundaries of the district as the department deems advantageous and advisable, but the boundaries of the district proposed in the petition for its organization may 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 consented to the enlargement or extension in writing.

**61-05-12. Department of water resources may make order denying petition - Filing.**

If the department of water resources determines the plan of irrigation proposed is not practicable or not economically sound, the department 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 the order must be filed with the county auditor of each county in which the proposed irrigation district is situated.

**61-05-13. Order establishing irrigation district - Calling election - Dividing district - Contents of order.**

1. If the department of water resources determines the establishment of the proposed irrigation district is advisable and the plan proposed for irrigating the lands in the proposed district is practicable and economically sound, the department shall make an order establishing the irrigation district, subject to the approval of the electors of the district at an election called by the department for that purpose.
2. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable hectares] of land, the department by the order shall divide the district into five or seven divisions or precincts as the department determines necessary for the convenience of the electors of the district. The divisions or precincts must be numbered and as nearly equal in size as practicable. 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 shall cast all the elector's votes for director and is eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies.
3. The department's order must set forth:
  - a. The time and place of holding the election.
  - b. The boundaries of the district.
  - c. That a petition sufficient in form and substance was filed with the department of water resources.
  - d. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.
4. 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 - Contents - Publication.**

Upon making an order establishing an irrigation district, the department of water resources shall give notice of an election to be held in the district to determine whether the electors of the district approve the establishment and organization of the irrigation district. The notice must state an elector desiring to be a candidate for the office of district director shall file the elector's name with the department of water resources not less than twenty days before the election. The notice must 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 department and designate a name for the district. The notice must be filed with the county auditor of each county in which the proposed district is situated and be published once each week for two consecutive weeks in the 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 must 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 department of water resources as \_\_\_\_\_ irrigation district, the question whether the order of the department of water resources establishing the irrigation district is approved. Notice is given that the lands of the district are described fully in the order of the department of water resources establishing the district and filed in the department'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, to 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 to have the elector's name appear on the ballot shall file the elector's request in writing with the department of water resources not less than twenty days before the election.

Dated \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_

Director of the Department of Water Resources

**61-05-16. Department of water resources 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 department of water resources shall appoint from the electors of the district one clerk and two judges to constitute a board of election for the district. If the district is divided into divisions or precincts, the board of election must be appointed from the electors of each division and shall serve as a board of election for the district. 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 of the election board.

**61-05-17. Conduct of election - Votes canvassed by board and department of water resources - Retaining ballots.**

An election upon the question of organizing an irrigation district must 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, and the clerk of the election board shall certify to the department of water resources the result of the election. The clerk of the board then shall wrap securely the ballots cast at the election and shall express or mail the secured ballots by registered or certified mail to the department, which also shall canvass the ballots and verify the result. The department shall file and retain in the department's office the ballots cast at the election.

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

After the canvass of votes has been verified by the department of water resources, if a majority of all votes cast are in favor of the organization of an irrigation district, the department, by an order, shall declare the 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 department shall cause a certified copy of the order 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 the order with the county auditor of each county in which any portion of the district is situated. The organization of the district is complete upon the filings required in this section. The department of water resources 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 director of the department, and the directors shall take office upon receipt of the certification.

**61-05-19. Department of water resources to file order with secretary of state - Secretary of state to make certificate - Evidence.**

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

**61-05-20. Appeal to district court from orders and decisions of the department of water resources - Time - Undertaking.**

An appeal may be taken to the district court from any order or decision of the department of water resources by any person who is aggrieved by the order or decision, at any time within thirty days after the order or decision has been filed with the county auditor of the county in which the appeal is taken. The appeal must be taken by serving notice of appeal on the director of the department of water resources and by filing the notice of appeal, proof of service of the notice, 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 the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking must be made in favor of the department of water resources as obligee and may be enforced by the department. The appeal must 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. If the land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of the land is situated. Any appeal taken under this section must be docketed in the district court as any civil cause commenced in the district court is docketed. The district court has and shall exercise original jurisdiction in the appeal and shall hear and rule on the case, without a jury, in the same manner as a civil cause originally commenced in that court. The court may require and fix the time for the service and filing of formal pleadings. Appeals to the supreme court may be taken by the department of water resources or any other party to the cause from any judgment entered in the district court and from any order of the court if an appeal would lie from the order if the order 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.