

CHAPTER 61-12

FLOOD IRRIGATION PROJECTS

61-12-01. When improvements may be constructed. Dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in nonnavigable rivers or streams within this state may be established, constructed, and maintained in the several counties of the state under the provisions of this chapter whenever the same shall be conducive to the public health, convenience, or welfare.

61-12-02. Board of flood irrigation - How appointed - Filling vacancies - Office. The board of county commissioners of any organized county in this state, at any meeting of the board, by a majority vote of all the members, upon its own motion or on the petition of any person or persons interested, may appoint five property owners whose property lies within a flood irrigation project as a board of flood irrigation of the county. If the board of county commissioners appoints a board of flood irrigation it must appoint a board for each flood irrigation project in the county. One member of the board must be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Subsequent appointments must be made for terms of five years. All persons so appointed hold office until their successors are appointed and qualified. In case of a vacancy, the board of county commissioners may fill the vacancy for the unexpired term by appointment. The board of county commissioners shall provide an office for the board of flood irrigation at the county seat suitable for its use and the keeping of its records and shall provide suitable record books for its use.

61-12-03. Oath - Bond - Members of flood irrigation board. Any person appointed as a member of the board of flood irrigation, within ten days after appointment, shall take, subscribe, and file in the office of the county auditor an oath to perform the duties of the office faithfully, and within the same time shall make, execute, and file in the auditor's office a bond payable to the county, with sureties to be approved by the auditor, in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of the member's duties as a member of the board of flood irrigation.

61-12-04. Organization of board of flood irrigation. The members of the board of flood irrigation shall organize by electing from their number a chairman and a secretary. The board shall keep an office at the county seat and shall keep a record of its acts and proceedings and a separate record of the proceedings relating to each separate flood irrigation project, all of which shall be open for public inspection. Such records shall have the same force and effect as other public records. Three members of said board shall constitute a quorum for the transaction of business. Said board, when it is necessary, may employ a clerk and fix the clerk's compensation. It also may employ a competent surveyor or engineer.

61-12-05. Legal adviser of board of flood irrigation. The state's attorney of each county, as far as the state's attorney's other duties will permit, shall act as the legal adviser of the board of irrigation control. The board, however, by and with the consent of the board of county commissioners, may employ other counsel to advise and represent it in its proceedings.

61-12-06. Dam construction - Petition accompanied by map. A petition for the construction of a dam or a system of dams, including gates and other proper and necessary structures incidental thereto, may be made in writing to the board of flood irrigation. Such petition shall be signed by at least six freeholders of the district to be affected by the flood irrigation project and shall set forth and particularly describe the boundaries of the district which will be affected. The petitioners must accompany the petition with a map of such proposed district. Such map shall show the approximate location of the proposed dam or dams and other necessary works by means of which it is intended to control the waters of a river or stream. Said petition also shall describe in a general way the benefits expected to be derived from the establishment of such improvement.

61-12-07. Examination of damsite by board of flood irrigation - Appointment of engineer. Upon the presentation of a petition, as provided for in section 61-12-06 and the filing

of the same, the board of flood irrigation, as soon as practicable, shall proceed to examine the site of the proposed improvement and the territory or district to be benefited thereby. If, in its opinion, it is necessary for the public good, it shall adopt a resolution to that effect and a further resolution designating a competent engineer who shall make all necessary and proper surveys of the lands that may be benefited or injured by the establishment of such improvement and who shall prepare all proper and necessary plans and specifications for the improvement required to be constructed. Upon the completion of such plans and specifications, such engineer shall file the same with the said board of flood irrigation, together with an estimate of the cost of the construction of the proposed improvement as well as of the annual maintenance thereof.

61-12-08. Bond of petitioners - When required. The board of flood irrigation shall require a bond from the petitioners in a sum sufficient to pay all expenses of the required surveys and plans and specifications and of the flood irrigation board, if it should appear, after the engineer's report is filed, that the proposed improvement would cost more than the amount of the benefits to be derived therefrom.

61-12-09. Examinations and surveys - Authority to enter lands. For the purpose of making examinations or surveys or getting the necessary information for the preparation of plans and specifications, the board of flood irrigation, its engineers or employees, may enter upon any lands deemed proper and necessary.

61-12-10. Reports and plans of engineer - Copies filed with county auditor. Copies of the report and of the plans and specifications of the engineer shall be filed in the office of the county auditor in the county in which the improvement is proposed to be constructed, with the board of flood irrigation, and in such other places as the board of flood irrigation may order, all of which shall be open to inspection.

61-12-11. Location of improvement - Variance from petition. In locating an improvement, the board of flood irrigation, under the advice of the engineer, may vary from the location described in the petition, as may be deemed advisable.

61-12-12. Time for hearing fixed - Notice. Upon the filing of the engineer's report, the board of flood irrigation shall fix a date and public place for hearing objections to the petition, and the place of such hearing shall be some point in the vicinity of the proposed improvement, convenient and accessible for the majority of the landowners affected. At least ten days' notice of such hearing shall be given by publishing such notice once each week for two successive weeks in the official newspaper in each county in which the proposed project, or any part thereof, is located, if any is published therein, and if none is printed in the county then in the official newspaper printed in an adjoining county in the state. The hearing shall be held at least ten days after the last publication.

61-12-13. Contents of notice. Notices of the hearing shall set out briefly the substance of the petition, the date of the filing of the engineer's report, and the date when the board will act upon the petition, and must be signed by the members of the board, or a majority thereof.

61-12-14. Evidence - Petition to discontinue proceedings. All persons whose land may be affected by any irrigation project provided for in this chapter may appear before the board of flood irrigation and fully express their opinion and offer evidence upon the matters pertaining thereto. Should two-thirds of the landowners whose land is subject to assessment for the construction of such project and who own at least one-half of such land petition the board of flood irrigation to have further proceedings discontinued, said board, by resolution, shall order all further proceedings in connection therewith discontinued.

61-12-15. Showing required to establish project. If upon the examination by the board of flood irrigation, and after the filing with said board of the plans and specifications for any project, or if upon the hearing upon the petition, it shall appear that there was not sufficient cause for making such petition, or that the cost of the proposed project would be more than the amount of the benefits derived therefrom, the board of flood irrigation shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in

the proceedings, to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition and that the proposed project will not cost more than the amount of the benefits to be derived therefrom, the board of flood irrigation shall make an order establishing the project, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

61-12-16. Assessment of damages - How made. At the hearing provided for in section 61-12-12, the board of flood irrigation also shall determine what damage will be suffered, if any, by the owners of all lands within the district that will be affected by the building of such irrigation project. In determining such damages, no allowances shall be made for any benefits that may accrue to said land by the building of said project. The benefits, if any, shall be assessed under the provisions of section 61-12-22. The assessment of such damages shall be subject to review.

61-12-17. Review of assessment - Ten-day notice - Place of hearing. Ten days' notice of the time when and the place where an assessment of damages will be reviewed by the board of flood irrigation shall be given by publication in the official newspaper in each county in which the proposed project, or any part thereof, is located, if any is published therein, and if none is printed in the county, then in the official newspaper printed in an adjoining county in the state. The place appointed for such hearing shall be in the vicinity of the proposed improvement convenient and accessible for the majority of the landowners affected. At the time and place appointed, such board shall proceed to hear all complaints or objections relative to such assessment of damages and correct or confirm the same.

61-12-18. Petition for review of assessments. Should any landowner believe that the assessment of the damages suffered has not been made fairly or equitably the landowner may appeal to the district court of the county in which the land is situated, by filing a petition with the clerk of the district court of the county, asking for a review of such assessment of damages. The appeal must be taken in accordance with the procedure provided in section 28-34-01.

61-12-19. Issue placed on court calendar - Judgment - Costs. Upon the filing of a petition for the review of assessments in the office of the clerk of the district court of the county in which the land is situated, the clerk immediately shall notify the board of flood irrigation thereof. If it appears to the court upon the hearing that the assessments have not been made equitably, it may proceed to correct the same. The correction and adjustment is final, unless an appeal is taken to the supreme court.

61-12-20. Rights of way. The rights of way for the construction of any improvements required in an irrigation project, including all sites for dams, gates, and necessary ditches and canals, if not conveyed to the county by the owner, may be acquired by the board of flood irrigation by the exercise of the right of eminent domain in the manner prescribed by title 32. Any such right of way, when acquired, shall be the property of the county.

61-12-21. Damages - How paid. Upon the assessment by the board or court of the amount of damages to which the respective owners of land which may be damaged by the construction of a flood irrigation project may be entitled, and upon the assessment by the board or court of the amount of damages to which the respective owners of the right of way may be entitled, the board of flood irrigation shall issue warrants in sums sufficient to pay the damages so assessed, drawn upon the proper county treasurer and payable out of any funds in the hands of the treasurer for the construction of such flood irrigation project. Such warrants shall be negotiated at not less than their par value and the proceeds thereof paid to the owners of the land entitled thereto, according to such assessments of damages. The surplus, if any, shall be paid to the county treasurer, who shall place the same to the credit of the proper flood irrigation project fund.

61-12-22. Assessment of accruing benefits. Upon acquiring the right of way, and after the completion of the assessment of damages as provided in this chapter, the board of flood irrigation shall assess the percentage of the cost of constructing and maintaining the flood irrigation project and providing the right of way therefor and of paying all damages incurred by the owners of land affected thereby which any lot, piece, or parcel of land shall be liable to pay by

reason of the benefits accruing thereto, either directly or indirectly, by reason of the construction of such project.

61-12-23. Assessment of benefits subject to review. The assessment of benefits provided for in section 61-12-22 also is subject to review in the manner provided in section 28-34-01.

61-12-24. Return of assessment of benefits. After the assessment of benefits has been made, as provided in this chapter, or has been confirmed, if an appeal has been taken, and the specific amount of each assessment has been extended as provided by this chapter, the board of flood irrigation shall make return thereof to the county auditor who shall record the same in a book to be provided by the county for that purpose. Such return shall contain the petition for the project, a copy of the minutes of the survey and of the plans and specifications signed by the engineer, a copy of the order establishing the flood irrigation project, conveyances of the right of way, if any, and the assessments of damages and benefits.

61-12-25. Notice of construction - Letting of contracts. After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with chapter 48-01.2 for the construction of all work required, as shown by the plans and specifications on file.

61-12-26. Computation of costs - Contents. After the letting of a contract for the construction of flood irrigation works, the board of flood irrigation shall make a computation of the cost of the project which shall include:

1. All the expenses of locating and establishing the same, including the cost of right of way.
2. The damages paid to landowners for any cause.
3. The fees of the board and the legal and other necessary expenses incurred under the authorization of the board, including the cost of surveys, plans, and specifications.
4. Interest on all warrants issued or to be issued by the board of flood irrigation on account of such project, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay therefor is collectible by law.
5. All other expenses, together with the amount of all contracts let for the construction of the same.

The sum of all the costs and expenses thus incurred or to be incurred shall be the cost of the construction of such project.

61-12-27. Apportionment and enforcement of taxes. After fixing the cost of a flood irrigation project, the board of flood irrigation shall carry out upon the assessment list the specific amount which each lot or tract of land benefited by the project for which the tax is levied is liable to pay on account of procuring the same according to the percentage which by section 61-12-22 it is required to fix and determine. Such list thereupon shall be filed in the office of the county auditor of the county in which the lands benefited are situated and the auditor shall extend upon the tax list as a special tax the several amounts shown by such list, specifying in such tax list the particular flood irrigation project for the construction or procurement of which the special tax is assessed. Such special tax shall be collected and enforced in the same manner as other taxes.

61-12-28. Collection of flood irrigation taxes - Payment of expenses. The flood irrigation taxes shall be collected by the county treasurer and all moneys so collected shall be credited to the flood irrigation fund to which they belong, and the county treasurer shall be the custodian of such funds. Payment of all the expenses and costs of locating and constructing any such project shall be made upon approval by the board of flood irrigation. Warrants therefor shall

be signed by the chairman and secretary of the board. All such warrants, after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by the county treasurer, and thereafter shall bear interest at a rate not exceeding five percent per annum.

61-12-29. Additional assessments - When necessary. In case the amount realized from the assessment made for the construction of any flood irrigation project shall not be sufficient to pay therefor or to complete the same and pay all fees and incidental expenses, or to pay and retire any bonds issued in connection with the construction thereof, or if an enlargement of such project, or an extension thereof, becomes necessary, a further assessment shall be made to meet the additional expense, and the amount thereof shall be levied and collected in the manner provided in this chapter.

61-12-30. Board of flood irrigation may contract for purchase of water - Assessment for maintenance. The board of flood irrigation shall have the exclusive care, management, and control of a flood irrigation project, but for such purpose may enter into a contract with responsible parties for the operation thereof, and may also, when necessary, enter into a contract with the United States, or with a district or political subdivision of the state, for purchase of water, or for furnishing water for flood irrigation. For the purpose of defraying the expense of the care, operation, maintenance, and repair of such project, including fees of the members of the board, said board annually shall certify to the county auditor the amount that will be required for such purposes during the following year. Thereupon the county auditor shall apportion to the several parcels or tracts of land within such project the amount which each parcel or tract of land shall be assessable, such apportionment to be made on the basis on which the original benefits were assessed under the provisions of section 61-12-22, and shall extend such amount upon the tax lists as a special tax. The taxes so collected shall be credited to the proper fund.

61-12-31. Joint powers of flood irrigation boards in two or more counties - Apportionment of cost. Whenever it shall be deemed necessary by the boards of flood irrigation of two or more counties in this state to construct or extend a project through or into two or more counties in the state, the several boards of flood irrigation in the counties into or through which such proposed project may extend when completed, are empowered to establish, construct, and maintain such project through or into two or more counties in the following manner:

1. There first shall be presented to the board of flood irrigation in each of such counties a petition for the establishment of such flood irrigation project in the several counties as provided by law, and the boards of the several counties shall determine upon the necessity or expediency of the establishment of such flood irrigation project as provided by law;
2. The several boards of flood irrigation of the counties through or into which such proposed project may run then shall meet and agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course and territory of such project in all said counties as one project;
3. They may apportion the cost of establishing and constructing such entire project ratably and equitably upon the lands in each county in proportion to the benefits to accrue to such lands;
4. When they have so apportioned the same they shall make a written report of such apportionment to the auditors of the several counties affected, and the report shall show the portion of the cost of such entire project to be paid by taxes upon the lands in each of such counties. Such report shall be signed by the boards of flood irrigation of all counties affected; and
5. Upon the filing of such report, the board of flood irrigation of each county shall meet and assess against the lands in such county ratably and equitably as provided by

law an amount sufficient to pay the proportion of the cost of such drain fixed for such county by all said boards.

61-12-32. Tax or assessment not void. The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any project of flood irrigation laid out and constructed under this chapter shall be enjoined perpetually or declared absolutely void in consequence:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any such project shall have been located or established; nor
3. For want of proper conveyance or condemnation of the right of way.

The court in which any proceeding may be brought to reverse or to declare void the proceedings by which any project has been located or established, or to enjoin the taxes levied to pay therefor, on application of either party, shall appoint such person or persons to examine the premises or to survey the same, or both, as may be deemed necessary, and the court on final hearing shall make such order in the premises as shall be just and equitable and may order such taxes, or any part thereof, to remain on the tax list for collection or, if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require.

61-12-33. New proceedings - When. If any proceedings for the location, establishment, or construction of any project under the provisions of this chapter have been, or hereafter shall be, enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board of flood irrigation in consequence of any error, irregularity, or want of jurisdiction affecting the validity of such proceedings, and if any warrants shall have been issued in connection with such invalid or abandoned proceedings, the board of flood irrigation nevertheless may proceed under the provisions of this chapter to locate, establish, and construct the project under the name and in the location specified in the invalid or abandoned proceedings, or under a different name or in a different location. Such new proceedings shall be in accordance with the general provisions of this chapter.

61-12-34. Liability of members of flood irrigation board. Each board of flood irrigation shall make a report to the board of county commissioners of all projects begun, in process of construction, or finished, and also shall render a full account of all moneys which shall come into its hands. Every member of the board of flood irrigation shall be liable on the member's bond for any misapplication of money coming into the member's hands as a member of such board. The report required by this section shall include an itemized statement of all expenses and warrants drawn on account of each project.

61-12-35. Compensation of members of the board. Each member of a board of flood irrigation shall receive for services three dollars per day for the time actually spent by the member in the performance of the duties of office. Any member or officer of the board may receive additional compensation for special services rendered to the board and under the authority thereof.

61-12-36. Power of board of flood irrigation to administer oath. Any member of the board of flood irrigation shall have the power to administer any oath required in any proceeding had before the board or in which such member may be called to act officially.

61-12-37. Bonds - Issuance - Payment. The board of county commissioners of any county in which any flood irrigation project is proposed to be located and constructed shall issue bonds upon the written request of the board of flood irrigation. Such bonds shall be known as flood irrigation bonds and shall be in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating or

constructing any such project. The word "expenses" as used in this section shall be construed to cover every item of cost of said project from its inception to its completion as provided by this chapter. Such bonds shall be paid out of the revenues to be derived from taxes levied or to be levied and collected from that portion of the county found by the board of flood irrigation to be benefited by the project.

61-12-38. Interest rate of bonds. Flood irrigation bonds issued as provided in this chapter shall bear interest at a rate or rates resulting in an average net interest cost not exceeding twelve percent on those issues which are sold at private sale. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Interest and principal may be payable under the amortization plan over a period of not to exceed twenty years, or the principal may be divided into such amounts and made payable at such periods, not exceeding twenty years, as the board of county commissioners may determine.

61-12-39. Payment of entire assessment by landowner. Any landowner who may desire to pay the entire amount assessed against the landowner's land for the entire cost of any flood irrigation project, including warrants and interest thereon, prior to the sale of bonds may pay into the county treasury the amount of said assessments, for which the treasurer shall give the treasurer's receipt in full. Such lands shall not be included in the list of lands assessed.

61-12-40. Notice of issue of bonds - Given by county auditor. The county auditor shall give notice of the determination of the board of county commissioners to issue bonds by publishing a notice in the official newspaper of the county at least fifteen days before the date of selling said bonds. Said notice shall designate the project proposed to be bonded and in general terms shall notify all persons interested of their right to pay their total assessment prior to the date of the sale of said bonds, as provided in section 61-12-39. The money paid in shall be used to take up warrants, and the bonds issued shall be for such an amount as will pay the remainder of the cost of construction.

61-12-41. Sinking fund. The board of county commissioners shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same if serial bonds are issued.

61-12-42. Bonds issued on amortization plan. If bonds are issued on the amortization plan, the board of county commissioners shall provide funds for the payment of each annual amortization maturity, both for the payment of interest and for the principal portion of said maturity.

61-12-43. Regulations concerning issuance of bonds under this chapter. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of the county and countersigned by the county auditor, who shall keep a record of such bonds. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem for the best interests of all persons interested in the flood irrigation project for the cost of which the bonds are issued. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of the sinking funds to be created as provided for in this chapter, if issued serially. Whenever such bonds shall be issued, the tax provided for in section 61-12-27 shall not be collected all in one year but shall be divided into parts corresponding with the amounts and maturities of the bonds. Such parts shall be extended year by year upon the tax lists by the county auditor against the parcels of land and property liable to taxation for that purpose and collected in such year, and such fund shall constitute the sinking fund provided by this section. Should the bonds be issued and made payable under the amortization plan of payment, the tax provided for in said section shall be divided into parts corresponding with the principal payment required to be made each year under the said amortization plan, and such parts shall be extended year by year upon the tax lists in the manner and form provided herein for the retirement of bonds issued with serial maturities.

61-12-44. Levy of tax for interest - Separate sinking funds - County not liable for bonds. The board of county commissioners in each year shall levy upon the property liable to taxation on account of the location and construction of any project as provided by this chapter a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing such project. Separate sinking funds shall be provided for each separate project for the construction of which bonds shall have been issued. No funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was created. No county shall be liable for the payment of any bonds issued under the provisions of this chapter but such bonds shall be paid only out of the sinking funds created as provided in this chapter.

61-12-45. Assessment of omitted property - Additional assessments. If an improvement has been or hereafter shall be established, constructed, or maintained pursuant to the provisions of this chapter, the board of flood irrigation, even after the benefits therefor have been assessed, shall have the power, either upon its own motion or upon the request of any interested property owner within said improvement district, and after said improvement has been established and constructed, to examine into and determine whether any property located within said improvement district has not been assessed for benefits. If such board shall find and determine that such property has not been assessed for benefits and in fact has benefited by the establishment, construction, and maintenance of such improvement, it shall proceed to assess such property for such benefits. After the improvement has been established and constructed, the board likewise, upon petition of an owner, may reexamine the benefits thereof. If it appears from such reexamination that more property of such owner has been assessed than actually has been benefited, the board may reassess such benefits so as to conform to the proven facts. All assessments made under this section otherwise shall be made and reviewed in the manner provided in sections 61-12-22 through 61-12-24. If additional assessments are made pursuant to this section, the amount thereof shall be used, first to pay deficiencies in the cost of said project, if any, and the balance thereof, if any, shall be credited equitably and ratably upon the last payment of the assessments made upon the property originally assessed.

61-12-46. State engineer to assist county board of flood irrigation. The state engineer, upon the request of the board of flood irrigation of any county in this state, shall assist said board in determining whether or not the construction of any proposed dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in nonnavigable rivers or streams within this state would be conducive to the public health, convenience, or welfare.

61-12-47. Assessment for drainage. The board of flood irrigation of any flood irrigation project shall be and is empowered to levy a special tax against all land located within any particular pond in the project to be used for necessary ditching of lands located within the particular pond of the flood irrigation project to procure proper drainage for such lands. Said board shall annually certify to the county auditor the amount that shall be required for such drainage purposes during the following year. Thereupon the county auditor shall apportion the same to the several tracts or parcels of land within such pond within the project, the amount which each parcel or tract of land shall be assessable within said pond, such apportionment to be made on the basis on which the original benefits were assessed within the particular pond under the provisions of section 61-12-22, and shall extend such amount upon the tax lists as a special tax on the lands in such pond. The taxes so collected for drainage shall be credited to a drainage fund for the pond of the project involved.

61-12-48. Transfer of sinking fund to maintenance fund - Duty of county treasurer. The board of flood irrigation of any flood irrigation project shall have the right upon the payment of all the bonded debt of the flood irrigation project, by resolution, to transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project for use in maintenance, repair and care, and for payment of outstanding and unpaid warrants issued for maintenance of the project. The county treasurer as custodian of the funds of any flood irrigation project, of any county in this state, shall upon receipt of a certified copy of a resolution of any board of flood irrigation, showing that all bonded debt of a flood irrigation project has been fully

paid, transfer any and all funds then remaining in the sinking fund of the project to the maintenance fund of the project.