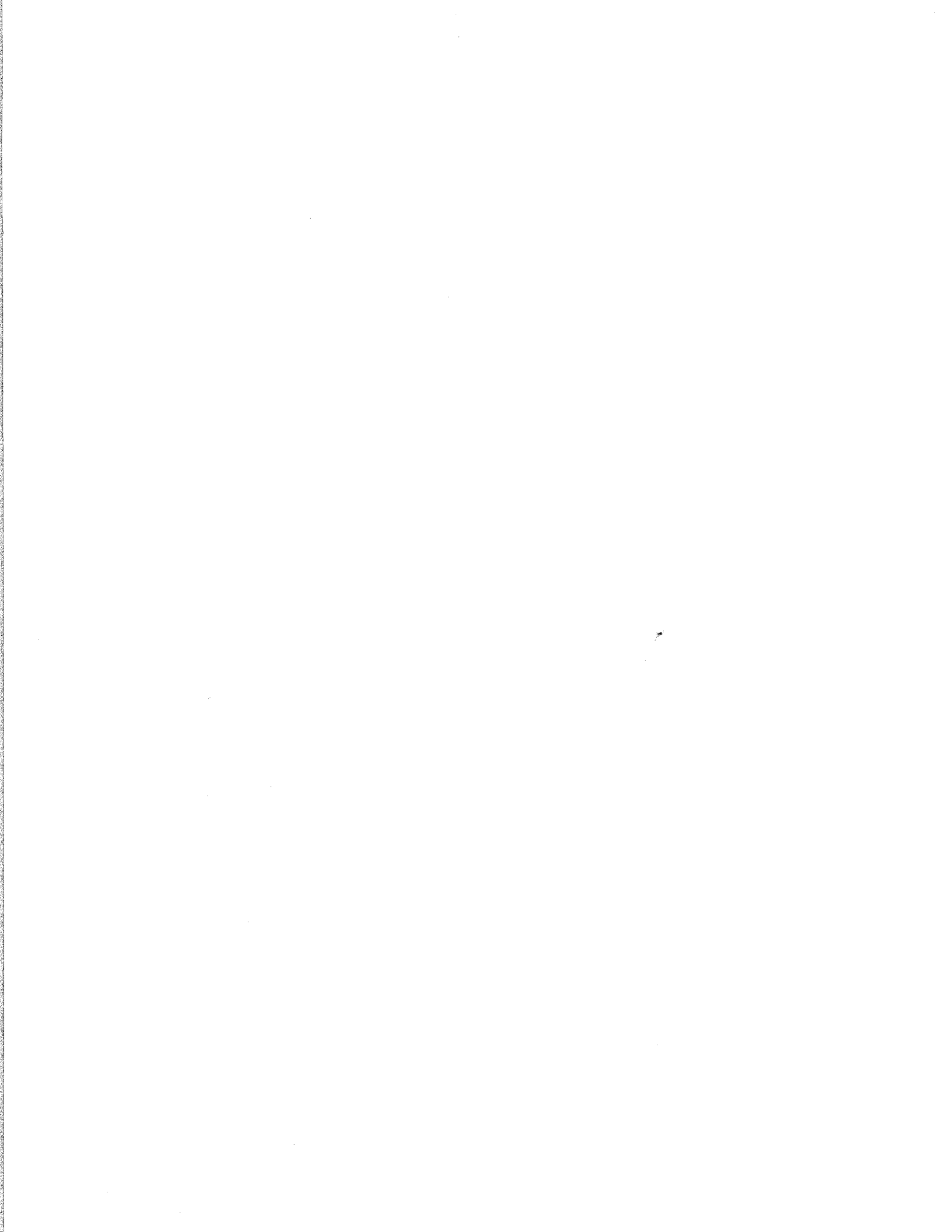


NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 16

December 1, 1979

Prepared by the Legislative Council staff  
for the  
Administrative Rules Committee



## TITLE 52

### Motor Vehicle Department

52-02-01-01. DEFINITIONS. The terms used throughout this article have the same meaning as in North Dakota Century Code title 39, except:

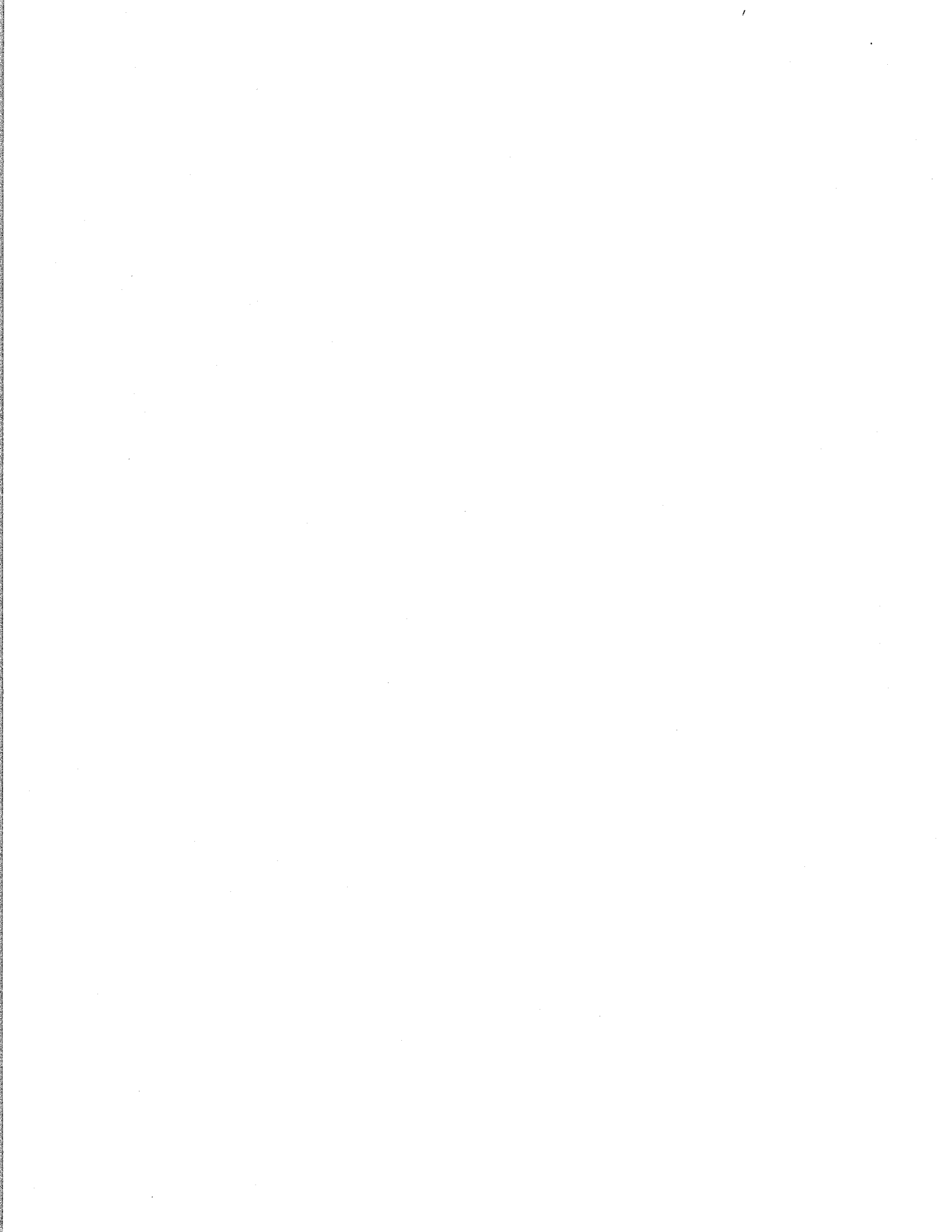
1. "Car" means any motor vehicle held by the dealer for sale or demonstration, whether such vehicle be designed for the transportation of property or passengers. The term, however, does not include a motor vehicle which is used by the dealer in the operation of those functions of the business which are not directly the functions of buying, selling, or exchanging of motor vehicles.
2. "Dealer's license" means the authority by which a person, partnership, or corporation may be a dealer in motor vehicles.
3. "Dealer's plates" means those number plates issued to a dealer which bear the distinctive number of the dealer's license.
4. "New motor vehicle" means a motor vehicle which has never been registered or to which a certificate of title has never been issued pursuant to the motor vehicle registration laws, title registration laws, or motor vehicle excise tax laws of this state or the similar laws of another state. The issuing of certificates of title or registration number plates to new motor vehicles being held for sale pursuant to the motor vehicle registration laws, title registration laws, or motor vehicle excise tax laws of this state or the similar laws of another state does not constitute registration or title registration for the purposes of this definition. Provided further, that a new motor vehicle as defined above which may have accumulated mileage equal to or in excess of one-half that mileage covered by the manufacturer's basic warranty, or which may have sustained body or mechanical damage equal to or in excess of one-fourth the manufacturer's suggested retail price, or which may be three or more months older than the current model year, may be considered to be a used motor vehicle.

History: Amended effective December 1, 1979.

General Authority  
NDCC 39-22-10(2)

Law Implemented  
NDCC 39-22-02,  
39-22-04,  
39-22-05,  
39-05-01







TITLE 62

Plumbing, Board of

STAFF COMMENT: This section was republished at the request of the Board of Plumbing to make a nonsubstantive change in the sentence structure.

62-03-02-16. FREEZING. Water service piping ~~and sewers~~ shall be installed below recorded frost penetration but not less below grade than seven feet [2.13 meters] ~~for water piping and four feet [1.22 meters] for sewers~~. Sewers shall be installed not less below grade than four feet [1.22 meters]. Water, soil, or waste piping are not permitted outside of a building, in an exterior wall, or in any area subject to freezing temperatures unless complete and proper provision is made to protect such pipe from freezing.

History: Amended effective November 1, 1979.

General Authority  
NDCC 43-18-09

Law Implemented  
NDCC 43-18-09









TITLE 67

Public Instruction, Superintendent of

STAFF COMMENT: Section 67-02-03-04 is the result of the directive contained in 1977 House Concurrent Resolution No. 3041 to adopt a standard in teacher certification regarding Indian studies.

CHAPTER 67-02-03  
EDUCATOR'S PROFESSIONAL CERTIFICATE - FIVE-YEAR

Section	
67-02-03-01	Renewals
67-02-03-02	Credit
67-02-03-03	Appeal
<u>67-02-03-04</u>	<u>Indian Studies</u>

67-02-03-04. INDIAN STUDIES. All teachers certified or renewed for certification after April 1, 1982, shall have two semester or three quarter hours of college credit in North Dakota Native American studies, or the equivalent in multicultural concepts with emphasis upon the Native American culture. The two-year certificate will be used for compliance for reentry and out-of-state applicants. Reciprocity will be used.

History: Effective December 1, 1979.

General Authority  
NDCC 15-36-01,  
28-32-02

Law Implemented  
NDCC 15-36-01

67-02-05-01. ELEMENTARY ENDORSEMENT. Reeducation for elementary school teaching may be accomplished in one of the following two ways:

1. By completing a college major or minor in elementary education; or
2. By presenting a minimum of twenty semester hours or thirty quarter hours of elementary education from a college or university with appropriate accreditation. The hours shall include subject matter, content, and methods courses at the elementary level in reading, language arts, mathematics, science, and social studies. The applicant must have a minimum of one year successful teaching experience in grades kindergarten to six or have supervised student teaching as part of the above program.

An applicant will have two years to fulfill the endorsement requirements.

History: Amended effective December 1, 1979.

General Authority  
NDCC 15-36-01,  
28-32-02

Law Implemented  
NDCC 15-36-01

67-02-05-02. KINDERGARTEN ENDORSEMENT. Reeducation of elementary teachers for preschool or kindergarten school teaching may be accomplished in one of the following two ways:

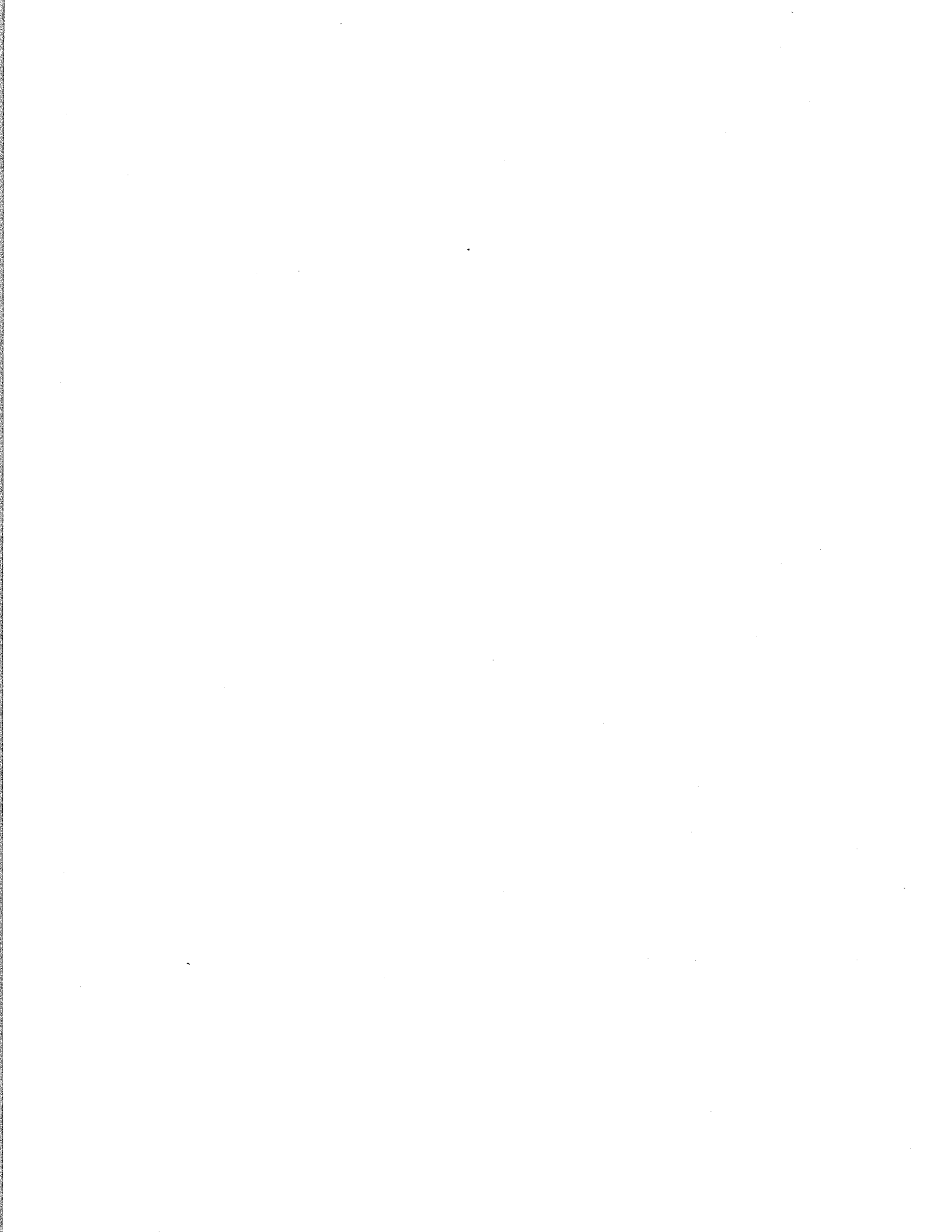
1. By completing a college major or minor in early childhood education; or
2. By presenting a minimum of sixteen semester hours or twenty-four quarter hours of early childhood education from a college or university with appropriate accreditation. The hours and work shall include curriculum and skills related to kindergarten-primary instruction, early childhood education and activities for the young child. The applicant must have a minimum of one year successful teaching experience applicable to the endorsed area or student teaching (practicum) of four semester hours or six quarter hours minimum.

An applicant will have two years to fulfill the endorsement requirements.

History: Amended effective December 1, 1979.

General Authority  
NDCC 15-36-01,  
28-32-02

Law Implemented  
NDCC 15-36-01





TITLE 75

Social Service Board

STAFF COMMENT: The change to section 75-02-01-05 is described in the synopsis contained in other committee material.

75-02-01-05. NEED.

1. Budget. A person's need is determined by a budget. Available net income and resources are collated with basic maintenance requirements. If net income and resources exceed maintenance requirements, no need or eligibility exists. If income is insufficient, the resulting budgetary deficiency is the amount of the assistance grant.
2. Definition of need.
  - a. Form 286 is entitled "Standard Requirements and Budget Plan - AFDC".
  - b. The combined requirements as shown on the basic requirements table represent the minimum amounts of income necessary to maintain a standard of living compatible with decency and health by size of assistance units. They represent one hundred percent need for an aid to families with dependent children assistance grant.
  - c. The social service board of North Dakota may curtail the payment of benefits by a system of ratable reductions whereby all recipients within one or more of the categorical assistance programs will receive a fixed percentage of the standard of need. The system of ratable reductions shall be implemented by the social service board of North Dakota to accommodate budgetary realities and to equitably apportion those funds allocated by the legislative assembly for the public assistance program.
  - d. The social service board may, within funding limitations, make a seasonable adjustment in basic need standards of up to ten percent for a maximum of six months during any calendar year.
3. Initial grant. The county social service board may not include need which is for a period prior to the month for which the first payment is authorized. An exception to this policy can be made when payments for preceding months must be made to correct previous administrative action such as for example to carry out the decision of a fair hearing.
4. Recipients living outside of state. Assistance recipients residing temporarily outside of North Dakota are to be budgeted in accordance with the same standards as are applicable for recipients in comparable living arrangements within the state.
5. Security assistance in whole dollars. Assistance payments are to be made in the amount of the nearest whole dollar. In establishing the

grant, needs and incomes will be computed in their exact amounts with the rounding off process to be done at the end.

6. Overpayments. Recovery of an overpayment of assistance resulting from agency error is prohibited unless the recipient has the income and resources, exclusive of the current assistance payment, to offset the impact of the recoupment. If the overpayment was caused by the recipient's willful withholding or misrepresenting of the facts, or by a willful failure by the recipient to report receipt of an excess payment which should have been known, every reasonable effort should be made to recover the amount of overpayment without regard to the availability of income and resources. Recovery of overpayments, where permitted, may be made from the cash reserve, exempt earned income, or future assistance payments. When recovered from future payments, the county social service board, as a safeguard against undue hardship, may not reduce a month's grant by more than ten percent of the basic requirement unless a court orders reduction of larger amounts. Likewise, a reduction shall not be made in more than six aid to families with dependent children grants, unless ordered by a court for a longer duration.
7. Standard requirements of budget.
  - a. Form 286 entitled "Standard Requirements and Budget Plan - AFDC" serves as the basis for budgeting need and is to be used in determining initial and continuing budgeting need for aid to families with dependent children.
  - b. Schedule 1 or 2 are to be used to budget the two major types of living arrangements. The eligibility worker must select the appropriate living arrangement and budget accordingly.
  - c. Stepchildren: aid to families with dependent children eligibility exists in the amount of unmet need if stepchildren do not receive sufficient financial support from their natural parent or parents, social security, or other sources specifically earmarked for them or the stepfather's income and resources are either inadequate or the stepfather refuses to commit them to the stepchildren. If the natural parent in the family has income, this is considered available to meet the needs of the stepchildren to the extent that the spouse and natural children in the family are not deprived of basic necessities. If the stepparent is willing to assume full responsibility for the stepchildren's unmet need, eligibility does not exist.
8. Special items of need. In Form 286 in Schedules 1 and 2, line C, are provisions for special needs. These items are as follows:
  - a. Essential services. The cost of services which are essential to the well-being of the recipient shall be provided for in his grant as needed. These must be specific services which the individual or family, because of age, infirmity, or temporary illness, cannot perform.



- b. Work/training expenses. Costs reasonably attributed to holding a job or participating in an educational training program must be considered. An eligible caretaker shall receive a standard work/training allowance of thirty dollars per month if employed or in training at least halftime (eighty-five hours or more per month) and fifteen dollars if less than halftime. Additional funds may be authorized if the recipient can show that the expenses actually incurred exceed the standard.
- c. Catastrophic events. In the event of a disaster involving an aid to families with dependent children recipient, the county social service board, after exploring the availability of property insurance and community resources, shall authorize the replacement of food, clothing, furniture, household equipment, and other needed supplies at a level comparable to that maintained by the recipient at the time of the fire, flood, tornado, or other natural disaster.
- d. Establishment of guardianship. The cost of establishing a legal guardianship for a recipient including the expense of original appointment and an annual report to the court if requested by the county judge may be incorporated in the recipient's grant as a special allowance. The inclusion of funds with which to compensate the guardian for managing the recipient's financial affairs is allowable up to five percent of the recipient's total monthly requirements if necessary to obtain guardianship services.
- e. Medical insurance premiums. The county social service board may authorize the cost of premiums for private medical and hospital insurance if at least one of the following conditions is met:
  - (1) The individual or family already carries private insurance and the individual or members of the individual's family have a chronic, preexisting condition which would make it difficult or impossible to reacquire coverage if the policy were to be dropped, particularly if eligibility for public assistance is expected to be of short duration.
  - (2) The individual or family already carries private insurance and the past and anticipated future utilization of medical benefits is such that continued coverage appears warranted.
- f. The cost of child care if associated with the work incentive program must be paid through the vendor method and need not, therefore, appear in the budget plan. Job-related child care expense for other than the federal work incentive program participation shall be identified as a special need and paid through the aid to families with dependent children grant. Reimbursement of child care costs shall be in accordance with rules established by the social service board which permit counties to set their own payment standards up to a maximum of seventy cents per hour per child. They also have the option of adding twenty percent to the hourly rate for a child who is under four years of age or who is physically or mentally handicapped. Child care providers in a given county need not be paid at the same rate. Likewise, families with more than one child

receiving services need not be reimbursed at the same hourly rate for each child. Because of the minimum wage requirement, in-home child care will be reimbursed up to the amount that would be paid for out-of-home care unless (1) the only alternative to in-home care is foster care, or (2) out-of-home care is deemed "unsuitable" because the parent's employment takes the child from the child's home during normal nighttime sleeping hours or because the child's illness or handicap makes it imperative that the child be cared for in the child's own home.

9. Income and resources.

- a. All income and resources of an individual applying for or receiving assistance must be taken into consideration except as is required by law to be disregarded. Only income and resources which are actually available to the individual or family may be taken into consideration in determining the amount of the grant.
- b. ~~Fluctuating-earned-income-shall-be-budgeted-so-as-to-be-deducted from-the-aid-to-families-with-dependent-children-grant-the-second month-following-the-month-in-which-the-income-was-earned:~~ Budgets for the first one or two months of eligibility shall be computed prospectively, i.e., the amount of assistance for a payment month shall be computed based upon the agency's best estimate of income and circumstances which will exist in that month. The amount of each subsequent month's payment shall be computed retrospectively. Earned income from self-employment shall be ascertained on the basis of prediction predicated on self-employment earnings during prior periods of similar employment. ~~Individual-Indian-moneys-income shall-be-prorated-over-the-six-month-period-following-an-applicable six-month-period-on-the-basis-of-individual-Indian-moneys-income received-during-the-initial-six-month-period:~~
- c. The county social service board must reinvestigate eligibility as promptly as possible but not exceeding thirty days after receiving information about changes in need, income, or resources.
- d. All income earned by an eligible aid to families with dependent children caretaker and by a child sixteen to eighteen years of age who is a nonstudent and living in the home must be accounted for in the assistance plan, subject to the earned income exemption.

10. Conservation of children's earnings for future identifiable need.

- a. If a child's earned income accumulates in an amount exceeding one thousand dollars of cash reserve, the child's family becomes ineligible for aid to families with dependent children unless the funds are set aside for an approved future identifiable need. The funds so set aside should be set aside in a joint account with the county social service board for a future need without jeopardizing the child's family's eligibility for assistance.
- b. Savings so set aside in such joint account may be released to the child from the joint account for any of the following reasons:

- (1) Payment of expenses for the child's training or education beyond high school.
  - (2) For payment of appropriate activities and items such as summer camps, debate, band, athletics, class rings, graduation pictures, etc.
  - (3) Upon the child's attaining the age of twenty-one.
  - (4) When the family is no longer certified for public assistance or it is the consensus of the county social service board and the family that the joint account no longer represents good social planning.
  - (5) For any of a variety of other purposes acceptable to the county social service board.
11. Other income to be considered in determination of aid to families with dependent children need and explored by the county social service board.
- a. Income from workmen's compensation, unemployment compensation, and veteran's benefits.
  - b. Contributions of cash from relatives.
  - c. Court-ordered support payments.
  - d. All other income not exempted by law.
12. Loans. Loans made to applicants or recipients are not to be regarded as income when the nature of the loan is such that the principal is not available for current maintenance. When the loan constitutes a debt and the property purchased with the proceeds cannot be converted for current living needs, it does not represent a resource to be considered in determining property reserves.

History: Amended effective December 1, 1979.

General Authority  
NDCC 50-09-02

Law Implemented  
NDCC 50-09-02,  
45 CFR 224.30,  
45 CFR 233.20,  
45 CFR 233.90

STAFF COMMENT: Section 75-03-05-01 was republished to add an omitted statutory reference in the Law Implemented source note.

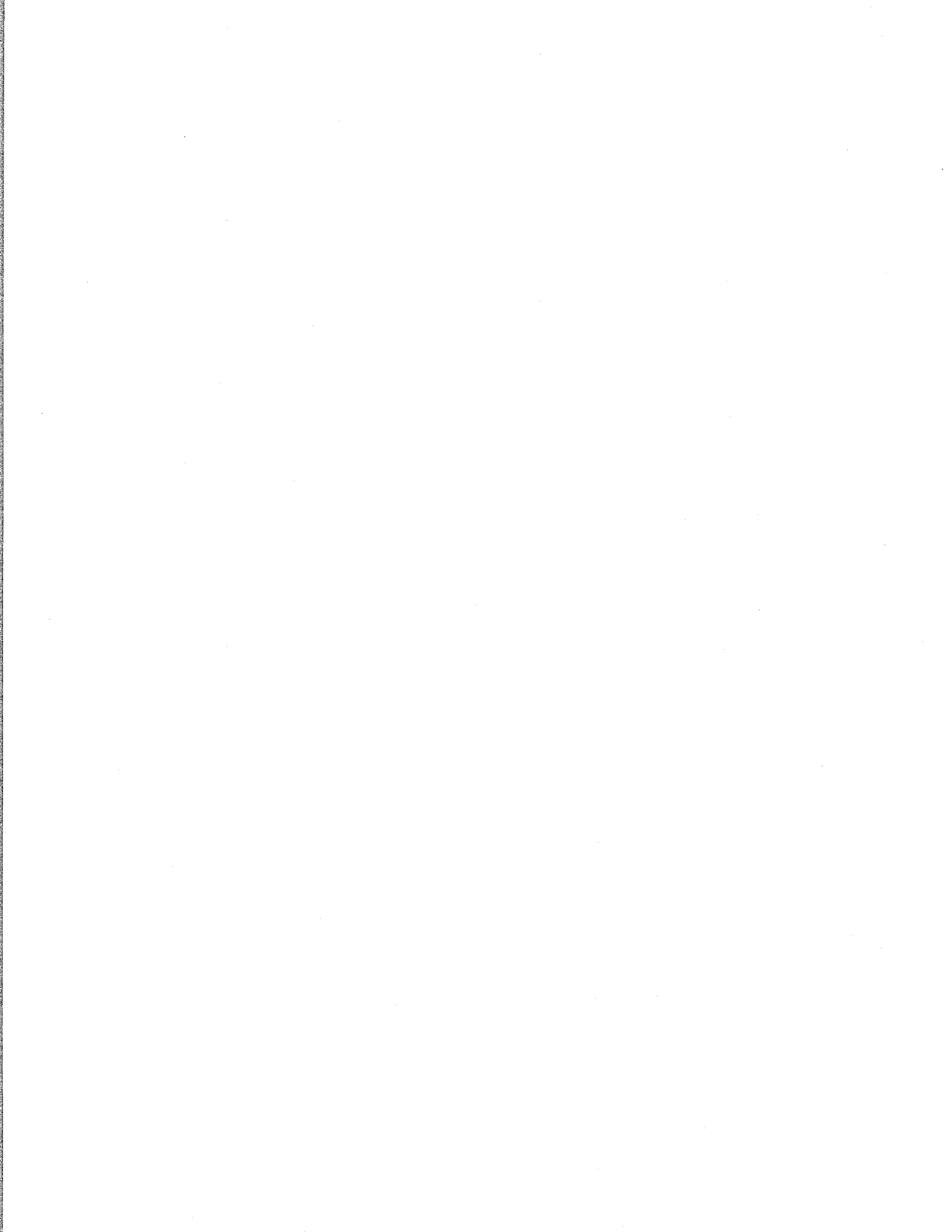
75-03-05-01. AUTHORITY AND OBJECTIVE. Under the authority vested in the social service board of North Dakota pursuant to North Dakota Century Code chapter 15-59.3, the social service board of North Dakota is empowered to prescribe and

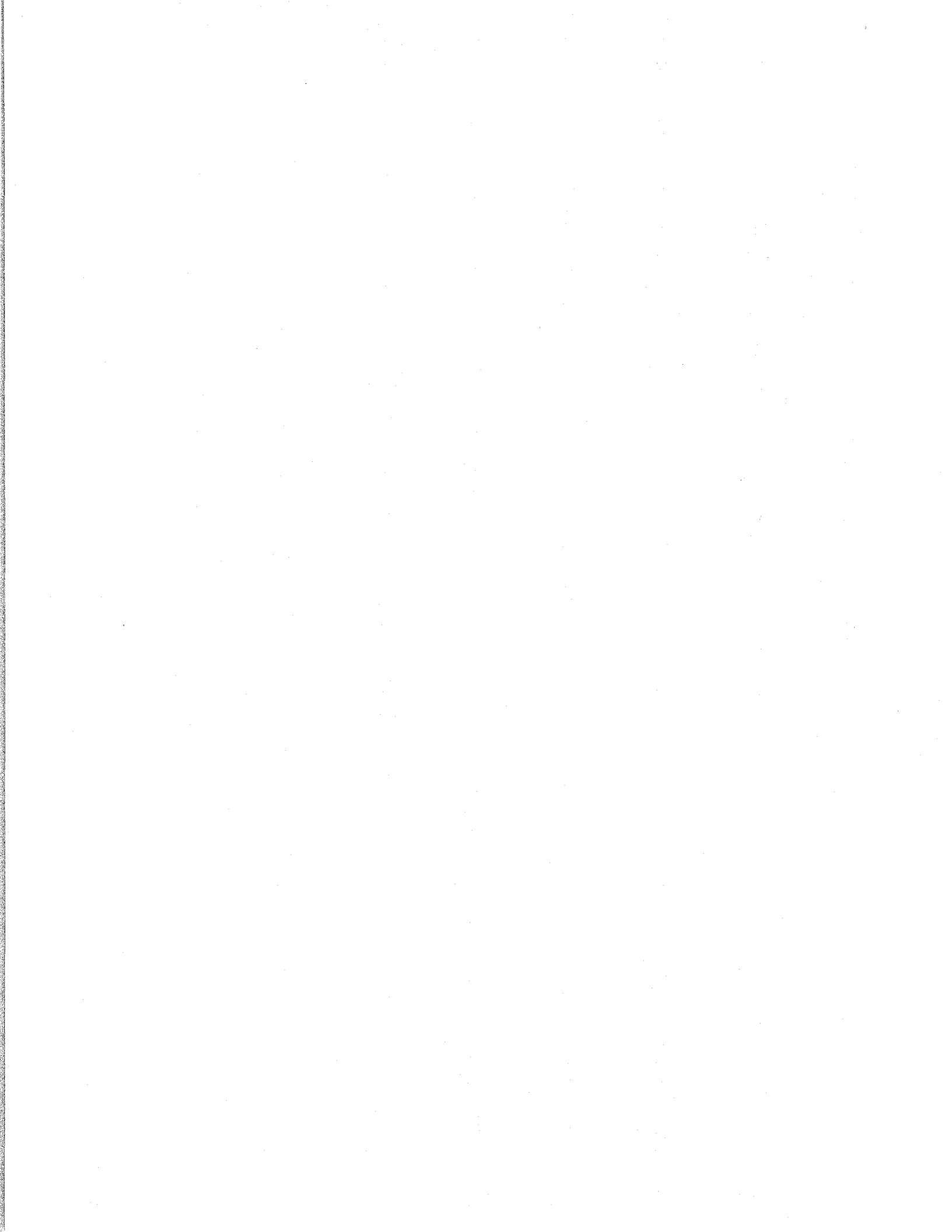
promulgate such rules and regulations as are necessary to assure that special education students needing boarding home care are provided proper food, shelter, security, and safety while receiving such care in a family boarding home.

History: Effective October 1, 1979.

General Authority  
NDCC 15-59.3-06

Law Implemented  
NDCC 15-29-08(22),  
15-59.3-06





TITLE 89

Water Conservation Commission

STAFF COMMENT: Sections 89-02-01-14, 89-02-01-22, and 89-02-01-26 are repealed. To avoid research problems numbers of repealed sections are not reassigned.

ARTICLE 89-02

DRAINAGE OF WATER

Chapter

89-02-01 Drainage of Ponds, Sloughs, or Lakes, or Any Series  
Thereof, and of Meandered Lakes

CHAPTER 89-02-01

DRAINAGE OF PONDS, SLOUGHS, OR LAKES, OR ANY SERIES  
THEREOF, AND OF MEANDERED LAKES

Section

89-02-01-01	Intent
89-02-01-02	Definitions
89-02-01-03	Permit Required
89-02-01-04	<del>Amended-Permit-Required</del> <u>Permits for Legal Drains</u>
89-02-01-05	Exceptions to Permit Required
89-02-01-06	Methods for Determining Area of Watershed
89-02-01-07	Filing Application
89-02-01-08	Referral of Applications to Appropriate Water Management District
89-02-01-09	Criteria for <u>Applications Determining Whether Drainage is of Statewide or Interdistrict Significance</u>
89-02-01-10	Hearing on Applications of Statewide or Interdistrict Significance
89-02-01-11	Emergency Drainage
89-02-01-12	Notice of Hearing
89-02-01-13	Content of Notice of Hearing
89-02-01-14	Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15	Time for Determination by Board of Commissioners
89-02-01-16	Determination by <del>Board-of-Commissioners</del> <u>Water Management District</u>
89-02-01-17	Approval of Applications by <del>Board-of-Commissioners</del> <u>Water Management District</u>
89-02-01-18	Denial of Application

89-02-01-19	<u>Approved Consideration by State Engineer of Applications of Statewide or Interdistrict Significance</u>
89-02-01-20	Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners
89-02-01-21	Conditions to Permits
89-02-01-22	Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23	Procedure Upon Complaint of Violation
89-02-01-24	Enforcement Action Without Receipt of Complaint
89-02-01-25	Criminal Complaint
89-02-01-26	Ditches or Drains Existing for Ten Years or More [Repealed]

89-02-01-01. INTENT. The intent of this article is to establish a procedure rules for the handling of applications for permits to drain certain ponds, sloughs, or lakes, or any series thereof, and meandered lakes, as required by North Dakota Century Code sections 61-01-22 and 61-15-08. ~~Since the flow of water does not recognize water management district boundaries, the legislative assembly has established a procedure for limited statewide control of drainage. Water management decisions which appear logical or beneficial in a local context may have a negative interdistrict or statewide impact. Article 89-02 provides such control.~~

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-02. DEFINITIONS. Unless the context otherwise requires, the following definitions apply:

1. "Board of commissioners" means the board of commissioners of a water management district.
2. "District" means water management district.
3. "Drain" includes any natural watercourse (as a lake, river, creek, stream, or draw) opened or improved for the purpose of drainage draining a pond, slough, or lake, or any series thereof, and any artificial drains of any nature or description (as a canal, grassed ditch, ditch, tile, or pipe) constructed for such purpose, including dikes and other appurtenant works.
4. "Lake" means a lowland having a greater depth of water and having more permanent standing water than either a slough or pond. ~~It would include~~



This definition classifies lakes as type five or "inland open fresh water" as classified by Circular thirty-nine of the department of interior.

5. "Lateral drain" means a drain constructed after the establishment of the original drain or drainage system (for which a permit was obtained) and which flows into such original drain or drainage system.
6. "Legal drain" means a drain constructed pursuant to North Dakota Century Code chapter 61-21.
7. "Meandered lake" means any pond, slough, or lake which ~~shall have~~ has been totally or partially meandered and its metes and bounds established by the government of the United States in the survey of public lands.
7. ~~"Outlet waterway" means the reach of a waterway which is directly connected to a drained wetland.~~
8. "Person" means a human being, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.
9. "Pond" means the lowland where the soil is covered with six inches [15 centimeters] to three feet [0.91 meters] or more of water during the growing season. This definition classifies ponds as type four or "inland deep fresh marshes"; ~~in accordance with Circular thirty-nine of the department of interior.~~
10. "Slough" ~~in accordance with Circular thirty-nine of the department of interior;~~ includes three types:
  - a. Type one are "seasonally flooded basins or flats" which includes lowlands where the soil is covered with water, or is waterlogged, during variable seasonal periods but is usually well drained during much of the growing season.
  - b. Type two are "inland fresh meadows" which includes lowlands where the soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of its surface.
  - c. Type three are "inland shallow fresh marshes" which includes lowlands where the soil is usually waterlogged during the growing season and is often covered with as much as six inches [15 centimeters] or more of water.
11. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.
12. "Watercourse" is defined by North Dakota Century Code section 61-01-06. That section provides: "A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow

of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character." Watercourse, for the purposes of this chapter, also means an outlet channel utilized to carry drained water from the outlet of the drain to a watercourse, as defined by section 61-01-06.

13. "Watershed" means the area draining into, or contributing surface water to; waters into a slough, pond, or lake.

~~13. "Waterway" means any channel; either natural (as a lake, river, stream, creek, or draw) or artificial (as a canal, grassed ditch, drain, ditch or pipe):~~

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-03. PERMIT REQUIRED.

1. A permit is required before any person may construct a waterway drain for the purpose of draining waters from a slough, pond, or lake, or any series thereof, having a watershed of eighty acres [32 hectares] or more.

2. A permit is required before any person may drain by pumping a slough, pond, or lake or connected series of sloughs, ponds, or lakes having a watershed of eighty acres [32 hectares] or more.

3. A permit is required before any person may drain or cause to be drained, or who shall attempt to drain any meandered lake.

~~3. A permit is required before any person may drain by pumping a slough, pond, or lake or connected series of sloughs, ponds, or lakes having a watershed of eighty acres (32 hectares) or more:~~

4. A permit is required for a "legal drain" constructed pursuant to North Dakota Century Code chapter 61-21. ~~The permit may encompass the entire assessed or benefited area:~~

5. A permit is required for the construction of any lateral drain, as defined herein, unless it is within the assessed area of a legal drain which has been permitted for the entire assessed area, in accordance with section 89-02-01-04.

6. A permit is required before any person may modify the drainage authorized in the original permit. Modification of drainage shall

include deepening and widening of a drain, or the extension of any drain.

7. A permit is required before any person may fill a pond, slough, or lake, for the purpose of causing the pond, slough, or lake having a watershed of eighty acres [32 hectares] or more to be drained by elimination of the existing storage.
8. A permit is required before any person may clean an old drain which has not been constructed as a legal drain and has not been properly maintained.
9. A permit is not required for the cleaning and clearing of obstructions to an authorized drain, or seeding or riprapping, provided that the drainage authorized in the original permit is not altered. Nor shall a permit be required for the cleaning and clearing of obstructions to a drain constructed pursuant to North Dakota Century Code chapter 61-21 which did not require a drainage permit when constructed, provided the drain has been properly maintained and the cleaning or clearing does not alter the original drainage.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-04. AMENDED--PERMIT--REQUIRED:---The--construction-of-any-lateral drain-shall-require-an-amended-permit:--An-amended-permit-is-also-required--before any--person--may--modify--in--any--manner--the-drainage-authorized-in-the-original permit:--Modification-of-drainage--does--not--include--cleaning--and--clearing--of obstructions--from--the--drainage--facility--or--seeding-and-riprapping:--However, modification-of-drainage-shall-include-any-of-the-following-activities:

- 1:--The-deepening-and-widening-of-drains-which-have-been-or-hereafter-may-be constructed:
- 2:--The-extension-of-any-drain:
- 3:--The-construction-of-any-lateral-drain:

PERMITS FOR LEGAL DRAINS. The permit for a "legal drain" constructed pursuant to North Dakota Century Code chapter 61-21, if so specified, may encompass the entire assessed or benefited area. In order for a permit to encompass the entire assessed or benefited area, the legal drain must be designed to accommodate, as determined by the state engineer, the drainage of the entire assessed area. However, a legal drain approved in accordance with this section may still require the approval of the appropriate drain board or water management district prior to the construction of lateral drains, as defined herein, within the assessed area.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-05. EXCEPTIONS TO PERMIT REQUIRED. The provisions of ~~subsections 1;-3;-and-4-of~~ section 89-02-01-03, except subsection 3, shall not apply to any drain constructed under the comprehensive supervision of a federal or state agency. The only agencies deemed capable of such comprehensive supervision are the state water commission, state highway department, army corps of engineers, ~~the United-States-department-of-agriculture;~~ the soil conservation service, for the project projects constructed pursuant to the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001] and the bureau of reclamation. ~~Other--exemptions--may--be--granted--by--the--state--engineer--on--a--case--by--case--basis--~~ However, these agencies shall notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-06. METHODS FOR DETERMINING AREA OF WATERSHED. The following methods ~~shall~~ may be utilized in determining whether the area of a watershed for a slough, pond, or lake, or any series thereof, comprises eighty acres [32 hectares] or more.

1. The watershed area may be estimated from the most ~~recently-published seven-and-one-half-minute--topographic--maps--unless--more~~ accurate or reliable maps or surveys are available; ~~and-individual-group-survey-need-not-be-made.~~ Published seven and one-half minute topographic maps are preferred.
2. Aerial photographs of the watershed may also be used to ~~determine~~ define the drainage area.
3. An onsite investigation of the drainage area by the water management district or the state engineer, or both, without the assistance of other data may be sufficient to determine drainage area.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22

89-02-01-07. FILING APPLICATION. Any person desiring a drainage permit shall file an application with the state engineer on state water commission form number twenty-eight. A copy of the permit application shall also be filed with the ~~board-of-commissioners-of-the~~ water management district within which is found a majority of the watershed or drainage area of the pond, slough, or lake, or any series thereof. (The Richland County water management district has requested that the permit application be forwarded through the local water management district for consideration before submission to the state engineer). ~~It---is---the recommendation--of--the--state--engineer--that--the--appropriate--water-management district-make-an-informal-recommendation-to--the--state--engineer--concerning--the permit--application--within-forty-five-days--The-state-engineer-shall-then-review the-application-and-any-recommendation-made-by-the--appropriate--water--management district.~~ The applicant, if requested by the state engineer or the water management district, shall provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis shall include a determination of the capacity of the drain and the receiving watercourse and a comparison of predrainage and postdrainage flows. If the application is defective incomplete, or if the information contained therein is insufficient to enable the state engineer or the appropriate water management district to make an informed decision on the application, the application shall be returned to the applicant for correction. ~~If--the--state-engineer-determines-that-a-permit-is-not-required-for the-proposed-drainage--the-state-engineer's-signature-or-a-facsimile-thereof-shall be--placed--on--the--application;--and--it--shall--be-forwarded-to-the-appropriate district-and-a-copy-of-the-transmittal-forwarded-to-the-applicant.~~

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-08. REFERRAL OF APPLICATIONS TO APPROPRIATE WATER MANAGEMENT DISTRICT. The state engineer shall determine whether the application involves drainage of statewide or interdistrict significance. The state engineer shall attach to the application any comments, recommendations, and engineering data which may assist the appropriate district in making a determination on the application. ~~The-state-engineer--shall--also--indicate--whether--the--application involves--drainage--of--statewide--or--interdistrict--significance;--the-state-engineer shall-affix-the-state-engineer's-signature;--or-a-facsimile-thereof-to-applications which--are--not-of-statewide--or--interdistrict--significance.~~ The application shall then be referred to the appropriate ~~board-of-commissioners-of-the~~ water management district within which is found a majority of the watershed or drainage area of the pond, slough, or lake, or any series thereof.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-09. CRITERIA FOR APPLICATIONS DETERMINING WHETHER DRAINAGE IS OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. In determining whether the proposed drainage is of statewide or interdistrict significance, the state engineer shall be guided by the following criteria:

1. Drainage which would affect property owned by the state or its political subdivisions ~~is-of-statewide-or-interdistrict-significance.~~
2. Drainage ~~which--would-cause-drainage~~ of sloughs, ponds, or lakes having recognized fish and wildlife values ~~is--of--statewide--or--interdistrict significance.~~
3. Drainage ~~--which--would-reduce-the-storage-capacity-of-a-slough;-pond;-or lake-to-be-drained-by-twenty-five-acre-feet-(30-83-cubic-dekameters)--or more-is-of-statewide-or-interdistrict-significance-~~
- 4- Drainage ~~which--would--drain~~ or ~~partially-drain~~ partial drainage of a meandered lake ~~is-of-statewide-or-interdistrict-significance.~~
- 5- 4. Drainage which would have a substantial effect on another water management district ~~is-of-statewide-or-interdistrict-significance.~~
- 6- 5. Drainage which would ~~place~~ convert previously noncontributing areas (based on twenty-five year event - four percent chance) into permanently contributing areas; ~~is-of-statewide-or-interdistrict-significance.~~
- 7- 6. The state engineer shall not be limited to the criteria of subsections 1 through 6 5. For good cause, the state engineer may classify any proposed drainage as having statewide or interdistrict significance, or the state engineer may determine that certain proposed drainage is not of statewide or interdistrict significance even though the proposed drainage falls within subsections 1, 2, 3, or 5; ~~or-6.~~
- 8- 7. Drainage of type one ~~wetlands~~ sloughs is not of statewide or interdistrict significance.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-10. HEARING ON APPLICATIONS OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. Upon referral by the state engineer of an application of statewide or interdistrict significance to the water management district, the board of commissioners; ~~the-board~~ shall set a date for a hearing. The purpose of the hearing shall be to collect evidence from those concerned as to whether the application to drain should be granted, and if so, the conditions under which any water may be drained. In addition, the board shall investigate whether the projected additional quantity of water which will be drained will ~~exceed--the~~

~~capacity--of--the-waterway~~ overburden the watercourse into which the water will be drained, and whether such drainage will flood or adversely affect the lands of lower proprietors. ~~The state engineer and the board of commissioners may agree to have the state engineer or the state engineer's representative act as hearing officer:~~ A hearing shall not be required for proposed drainage which is not of statewide or interdistrict significance. However, the appropriate water management district may hold hearings on such applications at its discretion.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-11. EMERGENCY DRAINAGE. The requirement for a hearing and notice thereon may be waived by the state engineer in order for the board of commissioners to process applications for temporary emergency drainage. However, a hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent and has been determined by the state engineer to be of statewide or interdistrict significance.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-12. NOTICE OF HEARING. For all hearings required pursuant to this article, the board of commissioners water management district shall ~~cause--the applicant,~~ at the applicant's expense, to publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. The final published notice shall be published not more than fifteen days, nor less than five days, before the date set for the hearing. The ~~board--of commissioners~~ water management board shall also ~~cause--the applicant,~~ at the applicant's expense, to give notice by certified mail not more than thirty days nor less than ten days from the date set for hearing, to:

1. All record title owners of real estate or holders of a contract for deed whose property would be directly affected by the proposed draining, as determined by the board of commissioners of the water management district.
2. All downstream landowners riparian to the affected-waterway watercourse into which water will be drained, within two miles [3 kilometers] from the slough;--pond;--or--take--to--be--drained;--unless--the--board--of commissioners-or-state-engineer-indicates-otherwise outlet of the drain.

district shall make a determination on the application. The thirty-day time limit may be extended by the board for complex or unique applications.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-16. DETERMINATION BY ~~BOARD--OF--COMMISSIONERS~~ WATER MANAGEMENT DISTRICT. The determination by the ~~board--of--commissioners~~ water management district upon a permit application shall include the following considerations:

1. Whether the quantity of water to be drained will ~~exceed-the-capacity-of the-waterway~~ overburden the drain and receiving watercourse into which the water will be drained.
2. Whether the drainage will ~~cause-flooding-on~~ flood or otherwise adversely affect the lands of lower proprietors.
3. Whether easements ~~already~~ acquired are adequate.
4. Whether the board has considered oral and written comments of-the-game and-fish-department;-the-department-of-health;--and--the--state--highway department and testimony received at the hearing.
5. Any conditions ~~placed--on--the--approval~~ deemed necessary by the water management district.
6. Any other factors deemed important by the water management district.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-17. APPROVAL OF APPLICATIONS BY ~~BOARD--OF--COMMISSIONERS~~ WATER MANAGEMENT DISTRICT.

1. Approved Applications not Involving Drainage of Statewide or Interdistrict Significance. The ~~board--of--commissioners~~<sup>1</sup> water management district's approval shall be noted thereon and it shall be a permit to drain. Notice of the board's action shall be forwarded to the state engineer.
2. Approved Applications Involving Drainage of Statewide or Interdistrict Significance. The ~~board-of-commissioners~~<sup>1</sup> water management district's



3. Any water management district which would be affected by the water to be drained. This must include any adjacent district into which the drained water will flow.
4. The North Dakota game and fish department.
5. The North Dakota department of health.
6. The state highway department for any proposed drainage which will affect the right of way of any state highway.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-13. CONTENT OF NOTICE OF HEARING. The notice shall give all essential facts concerning the proposed drainage, including, but not limited to: name and address of applicant; legal description of the area to be drained; purpose of drainage; waterway watercourse into which the water will be drained; legal description of confluence of outlet-waterway drain and creek-or-unnamed tributary watercourse into which the water will be drained; estimated dates drainage construction will commence; the time, date, and location of the hearing; and other pertinent information.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-14. AFFIDAVIT OF MAILING AND AFFIDAVIT OF NOTICE. Repealed effective December 1, 1979. An--affidavit--of--mailing--and--an--affidavit--of publication-of-notice-shall-be-forwarded-to-the-board-of-commissioners-before-they shall--make--a--determination--as--provided--in---sections---89-02-01-15---through 89-02-01-18.

General Authority  
NBCC-28-32-02;  
61-03-13

Law Implemented  
NBCC-61-01-22;  
61-15-08

89-02-01-15. TIME FOR DETERMINATION BY BOARD OF COMMISSIONERS. Within thirty days after a hearing required pursuant to this article, or at the earliest opportunity in emergency situations, the board-of-commissioners water management

approval shall be noted thereon, and the application, along with the determination, copies of all applicable easements, copies of the ~~affidavits--of-mailing-and-for-the~~ publication of notice, minutes of the hearing and any meeting relating thereto, and any information used by the board in reaching a determination on the application shall be immediately forwarded to the state engineer ~~utilizing--state--water commission--form--number--twenty-seven--"b"~~. Notice of the board's action shall be forwarded to the applicant.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-18. DENIAL OF APPLICATION. A denied application shall be returned to the applicant along with a copy of the ~~board-of-commissioners~~ water management district's determination. A complete copy of the determination shall also be forwarded to the state engineer.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-19. APPROVED CONSIDERATION BY STATE ENGINEER OF APPLICATIONS OF STATEWIDE OR INTERDISTRICT SIGNIFICANCE. The state engineer, upon receipt of an application to drain of interdistrict or statewide significance, which has been approved by a ~~board-of-commissioners~~ water management district, shall make an independent a determination whether the ~~granting-of-such~~ permit shall be ~~in-the best-interests-of-the-state~~ granted, utilizing information received from the water management district. The state engineer may also utilize any other available information. If the state engineer determines that the applicant and the ~~board-of commissioners--has~~ water management district have satisfactorily shown that the proposed drainage ~~would--be--in--North--Dakota's--interest~~ satisfies applicable requirements, the state engineer shall approve the permit. If the state engineer is not so satisfied, the state engineer shall either deny the application or return it to the appropriate ~~board-of-commissioners~~ water management district for reconsideration noting the application's shortcomings thereon. In making the determination, the state engineer shall consider, among other things:

1. Whether the proposed drainage will adversely affect property owned by the state or a political subdivision.
2. Whether the water to be drained may overburden an interdistrict watercourse.

3. Whether the proposed drainage will flood or adversely affect the property of downstream landowners.

~~4. Other factors of statewide or interdistrict significance.~~

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-20. CRITERIA TO DETERMINE WHETHER DRAINAGE WILL ADVERSELY AFFECT LANDS OF LOWER LANDOWNERS. The state engineer and ~~board of commissioners~~ the water management district shall be guided by the following criteria:

1. ~~No uncontrolled~~ Uncontrolled drainage into receiving watercourses shall be permitted into receiving natural waterways considered to have an adverse effect unless specific data indicates that such receiving watercourse has sufficient capacity to handle ~~a one-in-twenty-five-years event (four-percent-chance) or greater~~ the additional flow of water.
2. ~~No uncontrolled~~ Uncontrolled drainage from a noncontributing watershed, unless otherwise illustrated, shall be permitted from noncontributing watershed considered to have an adverse impact. A noncontributing drainage area, for the purposes of this section, is an area which does not contribute natural flowing surface water to a waterway at an average frequency more often than once in three years over the latest thirty-year period.
3. ~~No outlet waterway shall be designed to exceed a maximum capacity of a one-in-eight-year event (twelve and one-half percent chance):~~ The amount of care taken to avoid unnecessary injury, as determined by the water management district or the state engineer, or both, to the land receiving the drainage.
4. The drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.
5. The amount of water proposed to be drained.
6. The geographical and physical aspects of the drainage area.
7. The impact of sustained flows resulting from controlled drainage.
8. Exceptions may be authorized by the board of commissioners and state engineer on an individual basis. Factors that will be considered shall be watercourse capacities, control structures, drainage area, increased volume of runoff, and environmental effects impacts. Request for

exceptions must be accompanied by a plan satisfactory to the board-of-commissioners water management district and state engineer.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-11,  
61-15-08

89-02-01-21. CONDITIONS TO PERMITS. The state engineer may require as a condition to any permit a post-construction survey of the permitted drain. Cross-section or profile surveys ~~shall~~ may be required at points specified by the state engineer. Any permit to which the state engineer has attached such condition will be perfected upon receipt of the survey. The state engineer may attach any other conditions to an approved permit deemed necessary by the state engineer according to the circumstances of each application.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-22. REQUIREMENTS FOR A VALID PERMIT TO DRAIN. Repealed effective December 1, 1979. ~~A valid permit to drain must contain:~~

~~1.--Approval-by-the-appropriate-board-of-commissioners:~~

~~2.--Approval-by-the-state-engineer:~~

General Authority  
~~NBCC-28-32-02;~~  
61-03-13

Law Implemented  
~~NBCC-61-01-22;~~  
61-15-08

89-02-01-23. PROCEDURE UPON COMPLAINT OF VIOLATION. If the state engineer receives a complaint of unauthorized drainage which, the state engineer considers of-statewide-or-interdistrict-significance;-the-state-engineer shall so inform the appropriate district. The district shall report on the complaint within sixty thirty days. If the district fails to satisfactorily report on the complaint within sixty thirty days or if its report indicates the existence of unauthorized drainage but that it intends to take no action on the complaint, the state engineer may send such district notice of intent to file suit under the North Dakota Environmental Law Enforcement Act of 1975, as provided in North Dakota Century Code section 32-40-07. If the district fails to satisfactorily respond to the notice of intent, the state engineer may file a suit against the district

which seeks that the court order proper enforcement or which seeks other appropriate relief, as provided in North Dakota Century Code chapter 32-40.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 32-40-07,  
61-01-22,  
61-15-08

89-02-01-25. CRIMINAL COMPLAINT. If the state engineer determines that either North Dakota Century Code section 61-01-22 or North Dakota Century Code section 61-15-08 has been violated, the state engineer may cause a criminal complaint to be filed against the accused.

History: Amended effective December 1, 1979.

General Authority  
NDCC 28-32-02,  
61-03-13

Law Implemented  
NDCC 61-01-22,  
61-15-08

89-02-01-26. DITCHES OR DRAINS EXISTING FOR TEN YEARS OR MORE. Repealed effective December 1, 1979. ~~The state engineer shall treat all ditches or drains (except those draining meandered lakes) which have been in existence for ten years or more as valid; whether or not they were constructed in compliance with North Dakota Century Code section 61-01-22. However, the state engineer may process an application for a permit on such ditches or drains if applicant desires a permanent record of their existence.~~

General Authority  
NBCC-28-32-02,  
61-03-13

Law Implemented  
NBCC-61-01-22,  
61-15-08

