

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2294

Introduced by

Senators Thompson, Fischer

Representatives Nelson, Schmidt

1 A BILL for an Act to amend and reenact section 61-16.1-12.1, 61-16.1-18, 61-16.1-19,
2 61-21-13, and 61-21-14 of the North Dakota Century Code, relating to notice and approval of
3 proposed water projects.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code
6 is amended and reenacted as follows:

7 **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies**
8 **for certain improvements.** A water resource board may enter into an agreement with any
9 federal or state agency, or any combination thereof, for the construction of a project, under the
10 terms of which the contract for the work is to be let by the federal or state agency or any
11 combination thereof. If under the terms of the agreement at least fifty percent of the total cost
12 of constructing the project is to be paid by the agency or agencies and if any portion of the cost
13 of the project is to be paid by the levy of special assessments, the board may by resolution
14 create a project assessment district for the purpose of levying special assessments to finance
15 the amount that the district will be obligated to pay in accordance with the agreement, over and
16 above any other funds which are on hand and properly available for that purpose. The
17 assessment district must be of a size and form as to include all properties which in the
18 judgment of the board, after consultation with a registered engineer designated by the board for
19 that purpose, will be benefited by the construction of the proposed project, and the board shall
20 direct the engineer to prepare a map showing the boundaries of the proposed assessment
21 district. The board shall by resolution declare the necessity of the project, set forth the general
22 nature and purpose of the proposed project, estimate the total cost of the project, and the
23 approximate amount or fraction of the cost which the district will be obligated to pay under the
24 agreement, and the fact that this amount, or a lesser amount as the board may specify, is

1 proposed to be paid by the levy of special assessments upon property within the assessment
2 district determined to be benefited by the project. The board shall cause the resolution of
3 necessity together with a copy of the map showing the boundaries of the assessment district
4 and a notice stating the date and time by which the owners of any property liable to be specially
5 assessed for the proposed project must file ~~their votes on the proposed~~ written protests against
6 the project with the secretary of the board to be mailed to each landowner affected by the
7 proposed project as determined by the tax rolls of the county in which the affected property is
8 located. The board may send the material by certified mail or by regular mail attested by an
9 affidavit of mailing signed by the attorney or secretary of the board. The notice must also set
10 forth the time and place where the board ~~shall~~ will meet to determine ~~whether~~ the sufficiency of
11 any protests against the project is approved. The notice must ~~also~~ be published once a week
12 for two consecutive weeks in a newspaper of general circulation in the district and once a week
13 for two consecutive weeks in the official county newspaper of each county in which the
14 benefited lands are located. Affected landowners, and the governing body of any county,
15 township, or city to be assessed, have thirty days after the date of the first publication to file
16 their protests with the secretary of the board. Once the deadline for filing protests has been
17 reached, no more protests may be filed and no person may withdraw a protest. Within five
18 days after the first ~~mailing~~ publication of the resolution, the board shall cause a copy of the
19 resolution to be personally served upon any county, city, or township, in its corporate capacity
20 which may be benefited directly or indirectly from the construction of the proposed project and
21 upon any county which may become liable for any deficiency in the fund to be created for the
22 project, by delivering a copy of the resolution to any member of the governing body thereof.
23 The meeting must be held not less than thirty days after the ~~mailing~~ first publication of the
24 resolution, at which time the board shall determine ~~whether the project is approved~~ the
25 sufficiency of the written protests. If the board finds the protests filed within thirty days after the
26 first publication of the resolution contain the names of the owners of a majority by taxable value
27 of the land subject to assessment for the construction of the proposed project, then the protests
28 bar further proceedings. If the board finds ~~that fifty percent or more of the total votes filed are~~
29 ~~against a proposed project, then the board may not proceed further with the proposed project.~~
30 ~~If the board finds that less than fifty percent of votes filed are against the proposed project~~ the
31 protests to be insufficient, the board may proceed with the project. In any assessment district

1 created under this section the board may dispense with all other requirements of this chapter,
2 other than those stated in this section. After the contract for the work has been let, the board
3 may issue warrants on the fund of the project for the total amount of the cost thereof, and the
4 board, without holding the hearing required by section 61-16.1-18, shall proceed to determine
5 and levy any assessments against property benefited by the project and prepare an
6 assessment list all in accordance with the procedures required by sections 61-16.1-21 through
7 61-16.1-24. The provisions of sections 61-16.1-25 through 61-16.1-36 are applicable to the
8 assessments and the special warrants issued pursuant to this section.

9 **SECTION 2. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-18. Hearing - Notice - Contents.** Upon the filing of the engineer's report
12 provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21,
13 the water resource board shall fix a date and place for public hearing on the proposed project.
14 The place of hearing must be in the vicinity of the proposed project and must be convenient and
15 accessible for the majority of the landowners subject to assessment for the project or whose
16 property is subject to condemnation for the proposed project. The board shall cause a
17 complete list of the benefits and assessments to be made, setting forth each county, township,
18 or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed,
19 the amount each is benefited by the improvement and the amount assessed against each. At
20 least ten days before the hearing, the board shall file with the county auditor of each county or
21 counties in which the project is or will be located the list showing the percentage assessment
22 against each parcel of land benefited by the proposed project and the approximate assessment
23 in terms of money apportioned thereto. Notice of the filing must be included in the notice of
24 hearing. Notices of the hearing must contain a copy of the resolution of the board as well as
25 the time and place where the board will conduct the hearing. The notice of hearing must
26 specify the general nature of the project as finally determined by the engineer and the board.
27 The notice of hearing must also specify when and where votes concerning the proposed project
28 may be filed and an assessment list showing the percentage assessment against each parcel
29 of land benefited by the proposed project and the approximate assessment in terms of money
30 apportioned thereto. The board shall cause the notice of hearing to be published once a week
31 for two consecutive weeks in the newspaper or newspapers of general circulation in the area in

1 which the affected landowners reside and in the official county newspaper of each county in
2 which the benefited lands are located. The date set for the hearing must not be less than
3 twenty days after the ~~mailing~~ first publication of the notice. A record of the hearing must be
4 made by the board, including a list of affected landowners present in person or by agent, and
5 the record must be preserved in the minutes of the meeting. Affected landowners, and the
6 governing body of any county, township, or city to be assessed, must be informed at the
7 hearing of the probable total cost of the project and their individual share of the cost and the
8 portion of their property, if any, to be condemned for the project.

9 **SECTION 3. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-19. Voting on proposed projects.** At the hearing, the affected landowners,
12 and any county, township, or city to be assessed, must also be informed when and where votes
13 concerning the proposed project may be filed. Affected landowners, and the governing body of
14 any county, township, or city to be assessed, have thirty days after the date of the hearing to file
15 their votes with the secretary of the water resource board concerning the project. Once the
16 deadline for filing votes has been reached, no more votes may be filed and no person may
17 withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time
18 must be in writing. When the votes have been filed and the deadline for filing votes has
19 passed, the board shall immediately determine whether the project is approved. If the board
20 finds that fifty percent or more of the total votes ~~filed are as determined by section 61-16.1-20,~~
21 have protested against the proposed project, then the vote constitutes a bar against proceeding
22 further with the project. If the ~~board finds that the number of votes filed against the proposed~~
23 ~~project is less than fifty percent of the votes filed~~ total number of valid protests is found to be
24 insufficient in number, the board shall issue an order establishing the proposed project and may
25 proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to
26 contract or provide for the construction or maintenance of the project in substantially the
27 manner and according to the forms and procedure provided in title 40 for the construction of
28 sewers within municipalities. The board may enter into an agreement with any federal or state
29 agency under the terms of which the contract for the project is to be let by the federal agency,
30 the state agency, or a combination thereof. In projects where there is an agreement that a
31 party other than the board will let the contract, the board may dispense with all of the

requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice. As used in this section, "board" means water resource board.

SECTION 4. AMENDMENT. Section 61-21-13 of the North Dakota Century Code is amended and reenacted as follows:

61-21-13. Hearing on petition to establish drain and surveyor's report - Notice - Contents. Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12, the board shall fix a date and place for public hearing on the petition. ~~Such~~ The place of hearing ~~shall~~ must be in the vicinity of the proposed drain and ~~shall~~ must be convenient and accessible for the majority of the landowners subject to assessment for ~~such~~ the drain or whose property ~~shall be~~ is subject to condemnation for the proposed drain. At least ten days before ~~such~~ the hearing the board shall file with the county auditor a list showing the percentage assessment against each parcel of land benefited by the proposed drain and the approximate assessment in terms of money apportioned thereto. Notice of ~~such~~ filing ~~shall~~ must be included in the notice of hearing on the petition. ~~At least ten days' notice~~ Notice of ~~such~~ the hearing ~~shall~~ must be given by publishing a notice ~~at least once in the official newspaper of the county in which the proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain and each landowner whose property shall be subject to condemnation for the proposed drain as shown by the record in the office of the register of deeds shall be mailed a notice of such hearing at the owner's post office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition~~ once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be less than twenty days after publication of the first notice. The notice of hearing ~~shall~~ must specify the point or place of beginning of the proposed drain and where it terminates, and ~~shall~~ must describe the general course of the drain as finally determined by the engineer and the board. The notice of hearing ~~shall~~ also must specify when and where votes ~~for and~~ against ~~such~~ the proposed drain ~~shall~~

1 may be filed. The final date when votes must be filed ~~shall~~ may not be less than ten days after
2 the date of the hearing on the petition. A form of ballot ~~shall~~ must be mailed with the notice of
3 hearing for use by the affected landowners in voting ~~for or~~ against the proposed drain. ~~An~~
4 ~~affidavit of mailing signed by the attorney or clerk of the board or other person mailing such~~
5 ~~notices shall be filed with the county auditor who shall file such affidavit with the records of the~~
6 ~~proceedings pertaining to that drain.~~ All persons whose land may be subject to assessment for
7 ~~such~~ the drain or whose property ~~shall be~~ is subject to condemnation for ~~such~~ the drain may
8 appear before the board, fully express their opinions, and offer evidence upon the matters
9 pertaining thereto.

10 **SECTION 5. AMENDMENT.** Section 61-21-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-21-14. Conduct of hearing on petition to establish drain.** ~~Prior to~~ Before the
13 hearing provided for in section 61-21-13, the board shall ~~first~~ prepare a roster or roll of affected
14 landowners subject to assessment for ~~such~~ the drain or whose property ~~shall be~~ is subject to
15 condemnation for ~~such~~ the drain, and shall limit voting rights to ~~such~~ those landowners. A
16 record ~~shall~~ must be made by the board of affected landowners present in person or by agent
17 and ~~such~~ the records ~~shall~~ must be preserved in the minutes of the meeting. Affected
18 landowners ~~shall~~ must then be informed of the probable total cost of the project and their
19 individual share of ~~such~~ the cost and the amount of their property to be condemned for ~~such~~
20 the project. The board shall fix a time, which ~~shall~~ may not be less than ten days after the
21 hearing on the petition, within which the votes ~~for and~~ against the establishment of the
22 proposed drain ~~shall~~ must be filed with the board. Objections to ~~or approvals of~~ the drain in
23 writing may be filed with the board and ~~shall~~ must be considered as votes ~~for or~~ against the
24 proposed drain, ~~as the case may be.~~ A telegram ~~shall be deemed~~ is considered a writing, and
25 any form of written ~~approval or~~ objection ~~which~~ that sufficiently indicates the intention of the
26 writer ~~shall be~~ is sufficient. Once the deadline for filing votes ~~for or~~ against the proposed drain
27 has been reached, no more votes ~~for or~~ against ~~such~~ the drain ~~shall~~ may be filed and no
28 person ~~shall~~ may withdraw that person's name from the list of those voting ~~for or~~ against the
29 proposed drain after the deadline for filing votes has been reached. Any withdrawals of
30 objections to ~~or approvals of~~ the proposed drain before that time ~~shall~~ must be in writing only.
31 When the votes of affected landowners have been filed and the deadline for filing votes ~~for and~~

1 against ~~such the~~ drain has been reached, the board ~~shall~~ immediately shall proceed to
2 determine whether ~~or not more than~~ fifty percent or more of the votes ~~filed~~, as determined by
3 section 61-21-16, are ~~in favor of the~~ against construction of the drain. Until ~~such the~~
4 determination is made, the board is without jurisdiction to take any further steps in the matter
5 except to determine whether ~~more than~~ fifty percent or more of the votes ~~filed~~ are ~~in favor of~~
6 against the drain and to adopt a resolution for discontinuance, if ~~not more than~~ fifty percent or
7 more of the votes ~~filed favor~~ are against construction of the drain.