

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1148

Introduced by

Natural Resources Committee

(At the request of the State Water Commission)

1 A BILL for an Act to create and enact a new section to chapter 61-16.1 of the North Dakota
2 Century Code, relating to release of water resource board easements; and to amend and
3 reenact sections 61-02-14.1, 61-16.1-38, and 61-16.1-53 of the North Dakota Century Code,
4 relating to dam construction easements, dam construction permits, and dike and dam removal
5 notices and hearings.

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

7 **SECTION 1. AMENDMENT.** Section 61-02-14.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-02-14.1. Release or assignment of easements - Procedure.** The commission
10 may, when it deems such action to be in the best interest of the state, for good and valuable
11 consideration, release easements granted to the state for the construction, operation, and
12 maintenance of dams, along with access thereto, if such dams have not been constructed
13 within ten years of the granting of the easement or if such dams are no longer useful ~~and will~~
14 ~~not be reconstructed.~~ The commission may also assign such easements to a political
15 subdivision if it determines the assignment would be in the best interests of the state. Any
16 release ~~executed under the authority of this section or assignment~~ shall be in the name of the
17 state of North Dakota by the governor and attested by the secretary of state.

18 **SECTION 2.** A new section to chapter 61-16.1 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Release of easements - Procedure.** When it deems such action to be in the best
21 interests of the district or other political subdivision, a water resource board or governing body
22 of another political subdivision may release easements assigned to it from the state for the
23 construction, operation, and maintenance of dams, along with access to the dams, if the dams
24 are no longer useful.

1 **SECTION 3. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-38. Permit to construct or modify dam, dike, or other device required -**
4 **Penalty - Emergency.** No dikes, dams, or other devices for water conservation, flood control
5 regulation, watershed improvement, or storage of water which are capable of retaining,
6 obstructing, or diverting more than ~~twelve and one-half~~ fifty acre-feet [~~15448.52~~ 61674.08 cubic
7 meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard
8 and high-hazard dam, may be constructed within any district except in accordance with the
9 provisions of this chapter. An application for the construction of any dike, dam, or other device,
10 along with complete plans and specifications, must be presented first to the state engineer.
11 Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and
12 specifications must be completed by a professional engineer registered in this state. After
13 receipt, the state engineer shall consider the application in such detail as the state engineer
14 deems necessary and proper. The state engineer shall refuse to allow the construction of any
15 unsafe or improper dike, dam, or other device which would interfere with the orderly control of
16 the water resources of the district, or may order such changes, conditions, or modifications as
17 in the judgment of the state engineer may be necessary for safety or the protection of property.
18 Within forty-five days after receipt of the application, except in unique or complex situations, the
19 state engineer shall complete the state engineer's initial review of the application and forward
20 the application, along with any changes, conditions, or modifications, to the water resource
21 board of the district within which the contemplated project is located. The board thereupon
22 shall consider, within forty-five days, the application, and suggest any changes, conditions, or
23 modifications to the state engineer. If the application meets with the board's approval, the
24 board shall forward the approved application to the state engineer. The state engineer shall
25 make the final decision on the application and forward that decision to the applicant and the
26 local water resource board. The state engineer may issue temporary permits for dikes, dams,
27 or other devices in cases of an emergency. Any person constructing a dam, dike, or other
28 device, which is capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~
29 fifty acre-feet [~~15448.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04
30 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit

to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ fifty acre-feet [~~15418.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the

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- 1 procedure provided in section 28-34-01. A hearing as provided for in this section is not
- 2 prerequisite to an appeal.