

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1331

Introduced by

Representatives Aarsvold, Hanson, Metcalf

Senators Heitkamp, Lindaas, Wardner

1 A BILL for an Act to amend and reenact sections 61-16.1-51 and 61-21-43.1 of the North
2 Dakota Century Code, relating to obstructions to drains.

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

4 **SECTION 1. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**

7 **Injunction - Definition.** If a water resource board determines that an obstruction to a drain
8 has been caused by the negligent act or omission of a landowner or tenant, the board shall
9 notify the landowner by registered mail at the landowner's post-office address of record. A
10 copy of the notice must also be sent to the tenant, if any. The notice must specify the nature
11 and extent of the obstruction, the opinion of the board as to its cause, and must state that if the
12 obstruction is not removed within such period as the board determines, but not less than fifteen
13 days, the board shall procure removal of the obstruction and assess the cost of the removal, or
14 the portion the board determines appropriate, against the property of the landowner
15 responsible. The notice must also state that the affected landowner, within fifteen days of the
16 date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the
17 demand the board shall set a hearing date within fifteen days from the date the demand is
18 received. In the event of an emergency the board may immediately apply to the appropriate
19 district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction.
20 Assessments levied under the provisions of this section must be collected in the same manner
21 as other assessments authorized by this chapter. If, in the opinion of the board, more than one
22 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in
23 accordance with the proportionate responsibility of the landowners. A landowner aggrieved by
24 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 procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain.

SECTION 2. AMENDMENT. Section 61-21-43.1 of the North Dakota Century Code is amended and reenacted as follows:

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office 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 obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction 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 upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. 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 accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in

- 1 which the land is located in accordance with the procedure provided for in section 28-34-01. A
- 2 hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is
- 3 located in a road ditch, the timing and method of removal must be approved by the appropriate
- 4 road authority before the notice required by this section is given and appropriate construction
- 5 site protection standards must be followed.