

Sixty-first  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2428**

Introduced by

Senators Olafson, Fischer

Representatives Hofstad, Vigesaa

1 A BILL for an Act to amend and reenact section 61-16.1-40.1 of the North Dakota Century  
2 Code, relating to appeals in federally constructed flood control or soil conservation service  
3 projects; and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Section 61-16.1-40.1 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **61-16.1-40.1. Maintenance of federally constructed projects - Assessment district**  
8 **established.** If a water resource board enters or has been assigned rights in a contract with a  
9 federal agency for construction of a flood control project or soil conservation service project,  
10 and the terms of the contract require the water resource board to provide for maintenance of  
11 the project after construction, the water resource board may finance in whole or in part the  
12 maintenance of the project with funds raised through the collection of a special assessment  
13 levied against the land and premises benefited by maintenance of the project. The  
14 assessments to be levied may not exceed two dollars per acre [.40 hectare] annually on  
15 agricultural lands and may not exceed two dollars annually for each five hundred dollars of  
16 taxable valuation of nonagricultural property. No action is required for the establishment of the  
17 assessment district or the assessments except the water resource board must approve the  
18 maintenance and assessment therefor by a vote of two-thirds of the members and the board of  
19 county commissioners of the county in which the project is located must approve and levy the  
20 assessments to be made by a vote of two-thirds of its members. If a board that undertakes a  
21 project finds that the project may benefit lands in this state outside water resource district  
22 boundaries, the board shall provide notice to the water resource board where the benefited  
23 lands are located. The board of each water resource district containing lands benefited by a  
24 project must approve the project and assessment by vote of two-thirds of its members. The

1 board of county commissioners in each county that contains lands benefited by a project must  
2 approve and levy the assessment to be made by vote of two-thirds of its members. If a project  
3 and assessment is not approved by all affected water resource boards and boards of county  
4 commissioners, the board of each water resource district and the board of county  
5 commissioners of each county shall meet to ensure that all common water management  
6 problems are jointly addressed. If the sponsoring water resource district and the  
7 nonparticipating water resource district agree, the sponsoring water resource district may  
8 appeal the decision of the nonparticipating board to the state engineer. If the nonsponsoring  
9 water resource district does not fully participate in the project, it is deemed to be  
10 nonparticipating. The appeal to the state engineer must be made within thirty days from the  
11 date notice of the nonparticipating board's decision has been received by the participating  
12 board. The appeal must be made by submitting a written notice to the state engineer which  
13 specifically sets forth the reason why the nonparticipating board's decision is erroneous. The  
14 appealing board also shall submit copies of the written appeal notice to the nonparticipating  
15 board. The state engineer shall handle the appeal by conducting an independent investigation  
16 and making an independent determination of the matter within ninety days of receiving the  
17 appeal. The state engineer may hold hearings on the matter and may enter property affected  
18 by the appeal for the purpose of investigating the appeal. If the state engineer determines that  
19 the project benefits lands in the nonparticipating water resource district and the project is in the  
20 public interest, the state engineer shall make an assessment of costs and certify the  
21 assessment to the county auditor of the county where the benefited lands within the  
22 nonparticipating district or districts are located. The county auditor shall extend the assessment  
23 against the property assessed. Each assessment must be collected and paid as other taxes  
24 are collected and paid. Assessments collected must be deposited with the state treasurer and  
25 are appropriated out of the state treasury to the state water commission on a continuing basis  
26 and must be credited to the water resource district undertaking the project. A person aggrieved  
27 by action of the state engineer under this section may appeal the decision of the state engineer  
28 to the district court in accordance with chapter 28-32. In addition, the water resource board that  
29 undertakes the project may proceed with the project if the board finances the cost of the project  
30 and does not assess land outside of the district. Before an assessment may be levied under  
31 this section, a public hearing must be held. The hearing must be preceded by notice as to date,

1 time, location, and subject matter published in the official newspaper in the county or counties  
2 in which the proposed assessment is to be levied. The notice must be published at least ten  
3 days but not more than thirty days before the public hearing.

4 **SECTION 2. APPLICATION OF ACT.** This Act does not apply to any project in  
5 negotiation or development on the effective date of this Act.