

Introduced by

1 A BILL for an Act to create and enact fifteen new sections to chapter 61-16.1 of the North
2 Dakota Century Code, relating to water resource boards; to amend and reenact sections
3 61-01-23, 61-05-02.1, 61-16.1-02, 61-16.1-09, 61-16.1-09.1, 61-16.1-15, 61-16.1-17,
4 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23, 61-16.1-24,
5 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-42, 61-16.1-43, 61-16.1-51, and 61-16.1-54,
6 subdivision g of subsection 4 of section 61-32-03.1, and subsection 3 of section 61-32-03.2 of
7 the North Dakota Century Code, relating to water resource boards and procedures for
8 assessment projects undertaken by water resource boards; and to repeal section 61-16.1-01
9 and chapter 61-21 of the North Dakota Century Code, relating to water resource districts, water
10 resource boards, assessment procedures and requirements, and drains.

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

12 **SECTION 1. AMENDMENT.** Section 61-01-23 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-01-23. Investigation or removal of obstructions in channel.**

15 ~~In order to investigate or remove obstructions from the channel or bed of any watercourse~~
16 ~~and thus prevent ice from gorging therein and to prevent flooding or pollution of such~~
17 ~~watercourse~~

18 1. Upon a request from a landowner affected by a natural or artificial obstruction to a
19 drain or geologic feature that conveys water, the state water commission, any water
20 resource district, any municipality, any board of county commissioners, and any
21 federal agency authorized to construct works for prevention ofto prevent damage by
22 floods or for abatement ofabate stream pollution, mayshall notify, and upon the entity's
23 own volition, may notify, the owner of lands lying adjacent to the obstructed geologic
24 feature as follows:

- 1 a. The owner of adjacent lands shall remove the obstruction within thirty days of
2 receiving the notice; and
- 3 b. If the obstruction is not removed within the thirty days, the entity that sent the
4 notice may enter upon the owner's lands lying adjacent to such watercourse the
5 geologic feature to investigate or remove, or cause to be removed from the bed,
6 channel, or banks of such watercourse the geologic feature any obstructions
7 which that prevent or hinder the free flow of water or passage of ice therein, at the
8 owner's expense. However, such entry
- 9 2. Entry upon adjacent lands under this section must be by the most accessible route
10 and the entering agency entity is responsible to the landowner for any damage.

11 **SECTION 2. AMENDMENT.** Section 61-05-02.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

14 Notwithstanding section 61-05-02, an irrigation district may not be created if the primary
15 purpose of the district is to provide drainage benefits to residents of the district. A drainage
16 project proposed, undertaken, approved, or subject to assessment by an irrigation district also
17 is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an
18 irrigation district may not impact the authority of a water resource board to assess for drainage
19 projects under chapter 61-16.1 ~~or 61-24.~~

20 **SECTION 3. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-02. Definitions.**

23 ~~In~~ For purposes of this chapter, unless the context ~~or subject matter~~ otherwise
24 provides requires:

- 25 1. "Affected landowners" means landowners whose land is subject to special
26 assessment or condemnation for a project.
- 27 2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~
28 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~
29 ~~nature or description constructed for the purpose of drainage, including dikes and~~
30 ~~appurtenant works, which area drain~~ drain financed in whole or in part by special
31 assessment. ~~This definition may include more than one watercourse or artificial~~

- 1 channel constructed for the purpose of drainage when the watercourses or channels
2 drain land within a practical drainage area.
- 3 3. "Cleaning out and repairing a drain" means deepening and widening a drain and
4 removing obstructions or sediment, and any repair necessary to return the drain to a
5 satisfactory and useful condition.
- 6 4. "Commission" means the state water commission.
- 7 4.5. "Conservation" means planned management of water resources to prevent
8 exploitation, destruction, neglect, or waste.
- 9 5.6. "Costs of the frivolous complaint" means all reasonable costs associated with the
10 requisite proceedings regarding the removal of obstructions to a drain, removal of a
11 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
12 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
13 engineering fees, including investigation and determination costs; compliance
14 inspections; and necessary technical memorandum and deficiency review; and all
15 costs associated with any hearing conducted by a district, including preparation and
16 issuance of any findings of fact and any final closure order.
- 17 6.7. "District" means a water resource district.
- 18 7.8. "Drain" means any natural watercourse opened, or proposed to be opened, and
19 improved for drainage, and any artificial channel constructed for drainage. The term
20 includes dikes and appurtenant works and may include more than one watercourse or
21 artificial channel when the watercourses or channels drain land within a practical
22 drainage area.
- 23 9. "Frivolous" means allegations and denials in any complaint filed with a district made
24 without reasonable cause and not in good faith.
- 25 8-10. "Lateral drain" means a drain constructed after the establishment of an original drain
26 or drainage system and which flows into the original drain or drainage system from
27 outside the limits of the original drain.
- 28 11. "Practical drainage area" means, for assessment drains, the practical drainage area
29 determined by the survey and examination required under section 61-16.1-17.
- 30 12. "Project" means any undertaking for water conservation; flood control; water supply;
31 water delivery; erosion control and watershed improvement; drainage of surface

1 waters; collection, processing, and treatment of sewage, or discharge of sewage
2 effluent; or any combination thereof, including of purposes in this subsection, and
3 includes incidental features of any such the undertaking.

4 9-13. "Water resource board" or "board" means the water resource district's board of
5 managers.

6 **SECTION 4. AMENDMENT.** Section 61-16.1-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16.1-09. Powers of water resource board.**

9 Each water resource board shall have the power and authority to:

- 10 1. Sue and be sued in the name of the district.
- 11 2. Exercise the power of eminent domain as follows:
- 12 a. Except as permitted under subdivision b, the board shall comply with title 32 for
13 the purpose of acquiring and securing by eminent domain any rights, titles,
14 interests, estates, or easements necessary or proper to carry out the duties
15 imposed by this chapter, and particularly to acquire the necessary rights in land
16 for the construction of dams, flood control projects, and other water conservation,
17 distribution, and supply works of any nature and to permit the flooding of lands,
18 and to secure the right of access to such dams and other devices and the right of
19 public access to any waters impounded thereby.
- 20 b. (1) If the interest sought to be acquired is an easement for a right of way for any
21 project authorized in this chapter for which federal or state funds have been
22 made available, the district may acquire the right of way by quick take
23 eminent domain as authorized by section 16 of article I of the Constitution of
24 North Dakota, after the district attempts to purchase the easement for the
25 right of way by:
- 26 (a) Conducting informal negotiations for not less than sixty days.
- 27 (b) If informal negotiations fail, the district shall engage in formal
28 negotiations by:
- 29 [1] Sending the landowner an appraisal and written offer for just
30 compensation, which includes a specific description of the exact
31 location of the right of way, by certified mail or commercial

1 delivery requiring a signed receipt, and receiving the signed
2 receipt or documentation of constructive notice.

3 [2] Sending the landowner a written request for a meeting by
4 certified mail or commercial delivery requiring a signed receipt if
5 there is no agreement regarding compensation or no response to
6 the written offer within fifteen days of receipt, and receiving the
7 signed receipt or documentation of constructive notice.

8 [3] Sending the landowner a written notice, by certified mail or
9 commercial delivery requiring a signed receipt, of intent to take
10 possession of the right of way if there is no agreement regarding
11 compensation or no response to the written request for a
12 meeting within thirty days of receipt, and receiving the signed
13 receipt or documentation of constructive notice.

14 (2) Any written communication to the landowner must include contact
15 information for responding to the board and a description of the required
16 negotiation timeline.

17 (3) A district may not include or utilize any reference to quick take eminent
18 domain during negotiations to acquire the necessary easement for a right of
19 way. If formal negotiation efforts fail, the district shall request approval from
20 the board of county commissioners of the county in which the right of way is
21 located to take possession of the right of way by quick take eminent domain.
22 After receiving the request, the county commissioners shall hold a public
23 meeting and give the landowner thirty days' notice of the meeting to allow
24 the landowner to attend. After receiving verification from the district that
25 there has been no reference or threat of quick take eminent domain by the
26 district during negotiations, the commissioners shall vote on whether to
27 approve the taking of the easement for a right of way using quick take
28 eminent domain. If the county commissioners approve the use of quick take
29 eminent domain by a majority vote, the district may take immediate
30 possession of the right of way, but not a blanket easement, if the district files
31 an affidavit by the chairman of the water resource board which states the

1 district has fulfilled the required negotiation steps and deposits the amount
2 of the written offer with the clerk of the district court of the county in which
3 the right of way is located.

4 (4) Within thirty days after notice has been given in writing to the landowner by
5 the clerk of the district court that a deposit has been made for the taking of a
6 right of way as authorized in this subsection, the owner of the property taken
7 may appeal to the district court by serving a notice of appeal upon the
8 acquiring agency, and the matter must be tried at the next regular or special
9 term of court with a jury unless a jury be waived, in the manner prescribed
10 for trials under chapter 32-15.

11 (5) If ownership of a right of way has not terminated, ownership of a right of way
12 acquired under this subdivision terminates automatically when the district no
13 longer needs the right of way for the purpose for which it was acquired.

14 3. Accept funds and property or other assistance, financial or otherwise, from federal,
15 state, and other public or private sources for the purposes of aiding the construction or
16 maintenance of water conservation, distribution, and flood control projects; and
17 cooperate and contract with the state or federal government, or any department or
18 agency thereof, or any municipality within the district, in furnishing assurances and
19 meeting local cooperation requirements of any project involving control, conservation,
20 distribution, and use of water.

21 4. Procure the services of engineers and other technical experts, and employ an attorney
22 ~~or attorneys~~ to assist, advise, and act for it in its proceedings.

23 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all
24 dams and water conservation and management devices of every nature and water
25 channels, and to control and regulate the same and all reservoirs, artificial lakes, and
26 other water storage devices within the district.

27 6. Maintain and control the water levels and the flow of water in the bodies of water and
28 streams involved in water conservation and flood control projects within the district and
29 regulate streams, channels, drains, or watercourses and the flow of water therein
30 them by changing, widening, deepening, ~~or straightening the same~~, or otherwise
31 improving ~~the use and capacity thereof~~ them; or by cleaning out and repairing a drain.

- 1 7. Regulate and control water for the prevention of floods and flood damages by
2 deepening, widening, straightening, or diking the channels or floodplains of any stream
3 or watercourse within the district, and construct reservoirs or other structures to
4 impound and regulate such waters.
- 5 8. Make rules and regulations concerning the management, control, regulation, and
6 conservation of waters and prevent the pollution, contamination, or other misuse of the
7 water resources, streams, or bodies of water included within the district.
- 8 9. Do all things reasonably necessary and proper to preserve the benefits to be derived
9 from the conservation, control, and regulation of the water resources of this state.
- 10 10. Construct, operate, and maintain recreational facilities, including beaches, swimming
11 areas, boat docking and landing facilities, toilets, wells, picnic tables, trash
12 receptacles, and parking areas, and to establish and enforce rules and regulations for
13 the use thereof.
- 14 11. Have, in addition to any powers provided in this chapter, the authority to construct an
15 assessment drain in accordance with the ~~procedures and provisions~~requirements of
16 this chapter ~~61-24~~.
- 17 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in
18 its corporate name for its use and control both real and personal property and
19 easements and rights of way within or without the limits of the district for all purposes
20 authorized by law or necessary to the exercise of any other stated power.
- 21 13. Convey, sell, dispose of, or lease personal and real property of the district as provided
22 by this chapter.
- 23 14. Authorize and issue warrants to finance construction of water conservation and flood
24 control projects, assess benefited property for part or all of the cost of such projects,
25 and require appropriations and tax levies to maintain sinking funds for construction
26 warrants on a cash basis at all times.
- 27 15. Borrow money within the limitations imposed by this chapter for projects herein
28 authorized and pledge security for the repayment of such loans.
- 29 16. Order or initiate appropriate legal action to compel the entity responsible for the
30 maintenance and repair of any bridge or culvert to remove from under, within, and
31 around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris,

1 and any artificial block which hinders or decreases the flow of water through such
2 bridge or culvert.

3 17. Order or initiate appropriate legal action to compel the cessation of the destruction of
4 native woodland bordering within two hundred feet [60.96 meters] of that portion of a
5 riverbank subject to overflow flooding that will cause extensive property damage, or in
6 the alternative, order, that, if such destruction is permitted, the party or parties
7 responsible for the destruction must, when the board has determined that such
8 destruction will cause excessive property damage from overflow flooding due to the
9 erosion or blocking of the river channel, plant a shelterbelt which meets the
10 specifications of the board. In the event the native woodland within such area has
11 already been destroyed, the board may, in its discretion, order the planting of a
12 shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of
13 such river channel where overflow flooding has caused extensive property damage.
14 For purposes of this subsection, the words "riverbank" and "river channel" relate to
15 rivers as defined in the United States geological survey base map of North Dakota,
16 edition of 1963. The provisions of this subsection shall not be construed to limit,
17 impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local
18 entity to construct and maintain any flood control, irrigation, recreational, or municipal
19 or industrial water supply project.

20 18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or
21 section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when
22 such zoning is required to regulate and enforce the placement, erection, construction,
23 reconstruction, repair, and use of buildings and structures to protect and promote the
24 health, safety, and general welfare of the public within a floodplain area. In the event
25 such zoning authority fails to act or does not exist, the board may request the state
26 water commission to assist it in a study to determine and delineate the floodplain area.
27 Upon completion of such study, the board shall make suitable recommendations for
28 the establishment of a floodplain zone to all zoning authorities and the governing
29 bodies of all political subdivisions having jurisdiction within the floodplain area.

30 19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate,
31 maintain, and repair sanitary and storm sewer systems, or combinations thereof,

1 including sewage and water treatment plants, and regulate the quantity of sewage
2 effluent discharged from municipal lagoons; and contract with the United States
3 government, or any department or agency thereof, or any private or public corporation
4 or limited liability company, the government of this state, or any department, agency,
5 or political subdivision thereof, or any municipality or person with respect to any such
6 systems.

7 20. Develop water supply systems, store and transport water, and provide, contract for,
8 and furnish water service for domestic, municipal, and rural water purposes, irrigation,
9 milling, manufacturing, mining, metallurgical, and any and all other beneficial uses,
10 and fix the terms and rates therefor. Each district may acquire, construct, operate, and
11 maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines,
12 tunnels, and any and all works, facilities, improvements, and property necessary
13 therefor.

14 21. Coordinate proposals for installation, modification, or construction of culverts and
15 bridges in an effort to achieve appropriate sizing and maximum consistency of road
16 openings. The department of transportation, railroads, counties, and townships shall
17 cooperate with the districts in this effort. Each district shall also consider the possibility
18 of incorporating appropriate water control structures, where appropriate, as a part of
19 such road openings.

20 22. Plug abandoned water wells and participate in cost-sharing arrangements with water
21 well owners to plug water wells to protect aquifers from pollution or depletion, maintain
22 pressure, and prevent damage to surrounding property.

23 23. Have, in addition to any powers provided in this chapter, the authority to conduct
24 weather modification operations in accordance with the procedures and provisions of
25 chapter 61-04.1.

26 24. Establish, deepen, widen, and improve drains; and extend drains as necessary to
27 provide a suitable outlet or reasonably drain lands within a practical drainage area.

28 25. Install artificial subsurface drainage systems.

29 **SECTION 5.** A new section to chapter 61-16.1 of the North Dakota Century Code is created
30 and enacted as follows:

1 **Right of way - How acquired - Assessment of damages - Issuance of warrants.**

2 If lands assessed for drainage benefits are not contiguous to the drain, the water resource
3 board may exercise eminent domain to acquire access right of way to the drain over the land of
4 others. The right of way, when acquired, is the property of the county in which the lands are
5 located. The board may issue warrants in a sum sufficient to pay the damages assessed for the
6 right of way. The warrants must be drawn upon the proper county treasurer or, if the water
7 resource district treasurer is custodian of the drain funds, water resource district treasurer, and
8 are payable out of drain funds in the hands of the treasurer which have been collected for the
9 construction of the drain for which the right of way is sought. The board shall negotiate the
10 warrants at not less than the par value of the warrants and shall pay into court for the benefit of
11 the owners of the right of way the amount to which each is entitled according to the assessment
12 of damages, paying the surplus, if any, to the county treasurer or water resource district
13 treasurer, who shall place the moneys to the credit of the proper drain fund.

14 **SECTION 6. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

- 17 1. A water resource board may undertake the snagging, clearing, and maintaining of
18 natural watercourses and the debrisment of bridges and low-water crossings. The
19 board may finance the project in whole or in part with funds raised through the
20 collection of a special assessment levied against the land and premises benefited by
21 the project. The benefits of a project must be determined in the manner provided in
22 section ~~61-16.1-17~~61-16.1-18. Revenue from an assessment under this section may
23 not be used for construction of a drain or reconstruction or maintenance of an existing
24 assessment drain. Any question as to whether the board is maintaining a natural
25 watercourse or is constructing a drain or reconstructing or maintaining an existing
26 assessment drain must be resolved by the department of water resources. All
27 provisions of this chapter apply to assessments levied under this section except:
- 28 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
29 agricultural lands and may not exceed fifty cents annually for each five hundred
30 dollars of taxable valuation of nonagricultural property; ~~and.~~

- 1 b. If the assessment is for a project costing less than one hundred thousand dollars,
2 no action is required for the establishment of the assessment district or the
3 assessments except the board must approve the project and assessment by a
4 vote of two-thirds of the members and the board of county commissioners of the
5 county in which the project is located must approve and levy the assessments to
6 be made by a vote of two-thirds of its members.
- 7 (1) If a board that undertakes a project finds the project will benefit lands
8 outside water resource district boundaries, the board shall provide notice to
9 the water resource board where the benefited lands are located together
10 with the report prepared under section 61-16.1-17.
- 11 (2) The board of each water resource district containing lands benefited by a
12 project must approve the project and assessment by a vote of two-thirds of
13 its members. The board of county commissioners in each county that
14 contains lands benefited by a project must approve and levy the
15 assessment to be made by a vote of two-thirds of its members.
- 16 (3) If a project and assessment is not approved by all affected water resource
17 boards and county commission boards, the board of each water resource
18 district and the board of county commissioners of each county shall meet to
19 ensure all common water management problems are resolved pursuant to
20 section 61-16.1-10. In addition, the water resource board that undertakes
21 the project may proceed with the project if the board finances the cost of the
22 project and does not assess land outside the boundaries of the district.
- 23 c. All revenue from an assessment under this section must be exhausted before a
24 subsequent assessment covering any portion of lands subject to a prior
25 assessment may be levied.
- 26 2. Before an assessment may be levied under this section, a public hearing must be held
27 and attended by a quorum of the affected water resource boards and a quorum of the
28 affected boards of county commissioners. The hearing must be preceded by notice as
29 to date, time, location, and subject matter published in the official newspaper in the
30 county ~~or counties~~ in which the proposed assessment is to be levied. The notice must
31 be published at least ten days but not more than thirty days before the public hearing.

1 **SECTION 7. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-15. ~~Financing project~~Initiating project financed through revenue bonds,**
4 **general taxes, or special assessments - Apportionment of benefits~~Bond required.~~**

5 A water resource board shall ~~have the authority,~~ either upon request or by its own motion,
6 ~~to~~may acquire needed interest in property and provide for the cost of construction, alteration,
7 repair, operation, and maintenance of a project through issuance of improvement warrants or
8 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
9 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
10 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
11 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
12 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~
13 ~~benefited by the project in proportion to and in accordance with benefits accruing thereto. The~~
14 ~~board shall assess the proportion of the cost of the project, or the part of the cost to be financed~~
15 ~~with funds raised through levy and collection of special assessments which any lot, piece, or~~
16 ~~parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or~~
17 ~~township which is benefited thereby. In determining assessments, the water resource board~~
18 ~~shall carry out to the maximum extent possible the water management policy of this chapter that~~
19 ~~upstream landowners must share with downstream landowners the responsibility to provide for~~
20 ~~the proper management of surface waters.~~A request under this section must be in writing:
21 identify the starting point, terminus, and general course of the proposed drain; be signed by at
22 least two owners of property that would be drained by the proposed drain; and be accompanied
23 by a bond in a sum the water resource board deems sufficient to pay all expenses of the board
24 related to the petition in case the petition is denied. If among the leading purposes of the
25 proposed drain are benefits to the health, convenience, or welfare of the residents of any city,
26 the petition must be signed by a sufficient number of the property owners of the city to satisfy
27 the board there is a public demand for the drain. Property owners who sign a petition for this
28 purpose may not be required to pay expenses of the board related to the petition. If a petition
29 under this section is approved but the drain is not constructed, the board may not require the
30 petitioners to pay any expenses incurred by the board related to the petition.

1 **SECTION 8. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-17. ~~Financing of special improvements~~Assessment projects - Procedure -**
4 **Engineer report.**

5 When it is ~~proposed to finance in whole or in part the construction of a project with a~~water
6 resource board receives a petition or approves a motion to construct a project with funds raised
7 through the collection of special assessments levied against lands and premises benefited by
8 construction and maintenance of such project, the water resource board shall examine the
9 proposed project, and if in its opinion, if the water resource board decides further proceedings
10 are warranted, itthe board shall adopt a resolution and declare that itdeclaring constructing and
11 maintaining the proposed project is necessary to construct and maintain the project. The
12 resolution shall briefly state, identifying the nature and purpose of the proposed project, and
13 shall designatesdesignating a registered engineer to assist the board. As soon as practicable,
14 the board shall publish the resolution in the newspaper of general circulation in each area in
15 which potentially affected lands are located. For the purpose of making examinations or
16 surveys, the board or ~~its~~the board's employees, after written notice to each landowner, may
17 enter upon any land on which the proposed project is located or any other lands necessary to
18 gain access. The engineer shall prepare profiles, plans, ~~and specifications,~~ and total estimated
19 costs of the proposed project ~~and estimates of the total cost thereof.~~ The estimate of costs
20 prepared by the engineer ~~shall~~must include acquisition of ~~right~~rights of way and ~~shall be in~~
21 ~~sufficient detail to allow~~be sufficiently detailed for the board to determine the probable share of
22 the total costs ~~that will~~to be assessed against each of the affected landowners in the proposed
23 project assessment district.

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

26 **61-16.1-18. Hearing on assessment project - Notice -~~Contents.~~**

27 1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
28 satisfying the requirements of section 61-16.1-21, the water resource board shall fix a
29 date and place for public hearing on the proposed project. The place of hearing must
30 be in the vicinity of the proposed project and must be convenient and accessible for

1 the majority of the landowners subject to assessment for the project or whose property
2 is subject to condemnation for the proposed project.

3 2. The board shall cause a complete list of the benefits and assessments to be made,
4 setting forth each county, township, or city assessed in its corporate capacity as well
5 as each lot, piece, or parcel of land assessed; ~~the amount each is~~would be benefited
6 by the ~~improvement~~proposed project; and the amount assessed against each. At least
7 ten days before the hearing, the board shall file with the county auditor of each county
8 ~~or counties~~ in which the project is or will be located the list showing the percentage
9 assessment against each parcel of land benefited by the proposed project and the
10 approximate assessment in terms of money apportioned thereto. ~~Notice of the filing~~
11 ~~must be included in the notice of hearing. Notices to each parcel.~~

12 3. The water resource board shall provide notice of the hearing which must contain:
13 a. Include a copy of the petition, if any, and the resolution of the board as well as;
14 b. Specify the time and place where the board will conduct of the hearing. The notice
15 of hearing must specify the general nature;
16 c. Identify the beginning, terminus, and general course of the project as finally
17 determined by the engineer and the board. The notice of hearing must also
18 specify;
19 d. Specify when and where votes concerning the proposed project may be filed. The
20 ;
21 e. Include the assessment list showing the percentage assessment against each
22 parcel of land benefited by the proposed project and the approximate
23 assessment in terms of money apportioned thereto, along with a copy of the
24 notice of the hearing, must be to each parcel;
25 f. Be mailed with a ballot to vote on the proposed project to each affected
26 landowner at the landowner's address as shown by the tax rolls of the county or
27 counties in which the affected property is located. The board may send the
28 assessment list and notice and ballot by regular mail attested by an affidavit of
29 mailing signed by the attorney or secretary of the board. The board shall cause
30 the notice of hearing to be; and

1 g. Be published once a week for two consecutive weeks in the newspaper or
2 newspapers of general circulation in the area in which the affected landowners
3 reside and in the official county newspaper of each county in which the benefited
4 lands are located.

5 4. The date set for the hearing must ~~not be less than~~ at least twenty days after the mailing
6 of the notice ~~day the notice is mailed~~. A record of the hearing must be made by the
7 board, ~~including~~ include a list of affected landowners present in person or by agent,
8 and the record must be preserved in the minutes of the meeting. ~~Affected~~
9 ~~landowners,~~ Each affected landowner and the governing body of any county, township,
10 or city to be assessed, must be informed at the hearing of the probable total cost of
11 the project ~~and their individual share,~~ the share of the cost the landowner or governing
12 body will be assessed, and the portion of their ~~landowner or governing body's~~ property,
13 if any, to be condemned for the project.

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

16 **61-16.1-19. Voting on proposed projects - Notice of result.**

17 At the hearing on an assessment project, the affected landowners, and any county,
18 township, or city to be assessed, ~~must~~ must be informed when and where votes
19 concerning the proposed project may be filed. Affected landowners, and the governing body of
20 any county, township, or city to be assessed, have thirty days after the date of the hearing to file
21 their votes for or against the project with the secretary of the water resource board ~~concerning~~
22 ~~the project.~~ If a vote is mailed to the secretary, the vote is timely if the vote is received within the
23 voting period. During the voting period, ballots may not be opened and votes may not be
24 counted. Once the deadline for filing votes has been reached, ~~no more votes may be filed and~~
25 ~~no person may withdraw a vote~~ votes may not be filed or withdrawn. Any withdrawal of a vote
26 concerning the proposed project before that time must be in writing. ~~When the votes have been~~
27 ~~filed and~~ the deadline for filing votes has passed, the board immediately shall ~~immediately~~
28 determine whether the project is approved. If the board finds ~~that~~ fifty percent or more of the
29 total votes filed are against the proposed project, ~~then~~ the vote constitutes a bar against
30 proceeding further with the project. If the board finds ~~that~~ the number of votes filed against the
31 proposed project is less than fifty percent of the votes filed, the board shall issue an order

1 establishing the proposed project and may proceed, after complying with the requirements of
2 sections 61-16.1-21 and 61-16.1-22, to ~~may~~ contract or provide for the construction or
3 maintenance of the project in substantially the manner and according to the forms and
4 procedure provided in title 40 for the construction of sewers within municipalities. The board
5 may enter into an agreement with any federal or state agency under the terms of which the
6 contract for the project is to be let by the federal agency, the state agency, or a ~~combination~~
7 ~~thereof~~ both. ~~In projects in which~~ If there is an agreement that a party other than the board will let
8 the contract, the board may dispense with all of the requirements of title 40. Upon making an
9 order ~~establishing a project or denying establishment of~~ determining the vote bars establishing a
10 project, the board shall publish notice of the order or determination in a newspaper of general
11 circulation in the area in which the affected ~~landowners reside and in the official county~~
12 ~~newspaper of each county in which the benefited lands are located.~~ The notice must advise
13 affected landowners of their right to appeal. Any right of appeal begins to run on the date of
14 publication of the notice. ~~As used in this section, "board" means water resource board.~~

15 **SECTION 11. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-16.1-20. Voting right or powers of landowners.**

18 ~~In order that there may be~~ The allocation of voting rights among affected landowners on the
19 question of establishing a proposed project must provide a fair relation ~~relationship~~ between the
20 amount of liability for assessments and the power of objecting to the establishment of a
21 ~~proposed~~ the project; ~~the voting rights of affected landowners on the question of establishing the~~
22 ~~project are as provided in this section.~~ The landowner or landowners of tracts of land affected
23 by the project. Affected landowners have one vote for each dollar of assessment that the land is
24 subject to or one vote for each dollar of the assessed valuation of land condemned for the
25 project, as determined in accordance with title 57. The governing body of any county, township,
26 or city to be assessed also has one vote for each dollar of assessment against ~~such~~ the county,
27 township, or city. There may be only one vote for each dollar of assessment, regardless of the
28 number of owners of ~~such~~ a tract of land. ~~Where~~ if there is more than one owner of ~~such~~ the land
29 ~~exists,~~ the votes must be prorated among ~~them~~ the owners in accordance with each owner's
30 property interest. A written power of attorney authorizes an agent to protest a project on behalf
31 of any affected landowner ~~or landowners.~~

1 **SECTION 12. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-21. Assessment of cost of project Calculating benefits and assessments -**
4 **Certification.**

5 Whenever the

6 1. When a water resource board proposes to make any special assessment under the
7 provisions of this chapter, the board, prior to before the hearing required under section
8 61-16.1-18, shall inspect ~~any and~~ all lots and parcels of land; which may be subject to
9 assessment and shall determine from the inspection the particular lots and parcels of
10 lands which, in the opinion of the board, will be ~~especially~~ benefited by the
11 construction of the work for which the assessment is made ~~and~~. The board shall
12 ~~asses~~determine the proportion of the total cost of acquiring right of way and
13 constructing and maintaining ~~such improvement~~the project in accordance with, but not
14 exceeding, the benefits received ~~but not exceeding such benefits~~, against:

15 4. a. Any county, township, or city, in its corporate capacity, which may be benefited
16 directly or indirectly ~~thereby~~by the project.

17 2. b. Any lot, piece, or parcel of land which is directly benefited by ~~such~~
18 ~~improvement~~the project.

19 2. In determining benefits the board shall consider, among other factors, property values,
20 degree of improvement of properties, and productivity, ~~and the water management~~
21 ~~policy as expressed in section 61-16.1-15~~. Property belonging to the United States
22 ~~shall be~~ exempt from such assessment under this chapter, unless the United States
23 has provided for the payment of any assessment ~~which may be levied against it~~the
24 property for benefits received. Benefited property belonging to counties, cities, school
25 districts, park districts, and townships ~~shall not be~~ not exempt from ~~such~~ assessment
26 under this chapter, and political subdivisions whose property is ~~so~~ assessed shall
27 provide for the payment of ~~such~~the assessments, installments thereof, and interest
28 ~~thereon~~, by the levy of taxes according to law. Any county, township, or city assessed
29 in its corporate capacity for benefits received shall provide for the payment of ~~such~~the
30 assessments, installments thereof, and interest ~~thereon~~ from ~~it~~the political
31 subdivision's general fund or by levy of a general property tax against all the taxable

1 property therein in the jurisdiction in accordance with law. ~~No tax limitation Tax~~
2 limitations provided by any statute of this state shall do not apply to tax levies made by
3 any such political subdivision for the purpose of paying any special assessments
4 made ~~in accordance with the provisions of~~ under this chapter. There shall be attached
5 to the list of assessments a

- 6 3. The board shall prepare a list identifying the assessments allocated to each lot and
7 parcel of land for the project. A certificate signed by a majority of the members of the
8 board certifying that the same is a true and correct assessment of the benefit
9 therein must be attached to the list and state the assessment in the list are based on a
10 correct determination of the benefits to the assessed land described to the best of
11 their the members' judgment and stating. The certificate also must identify the several
12 items of expense included in the assessment.

13 **SECTION 13. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
16 **assessments - Confirmation of assessment list - Filing.**

- 17 1. After entering an order establishing the project, the water resource board shall cause
18 the assessment list to be published once each week for three successive weeks in the
19 newspaper or newspapers of general circulation in the district and in the official county
20 newspaper of each county in which the benefited lands are located together with a
21 notice of the time when, and place where, the board will meet to hear objections to any
22 assessment by any interested party, or an agent or attorney for that party. The board
23 also shall mail a copy of the notice of the hearing in an envelope clearly marked
24 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as
25 shown by the tax rolls of the county or counties in which the affected property is
26 located; provide notice of a hearing at which the board will meet to hear objections to
27 the proposed assessments from any interested party or agent for an interested party.

28 The notice must:

- 29 a. Include a copy of the order establishing the project;
30 b. Specify the time and place of the hearing;

- 1 c. Identify the beginning, terminus, and general course of the project as finally
- 2 determined by the engineer and the board;
- 3 d. Include the assessment list showing the percentage assessment against each
- 4 parcel of land benefited by the proposed project and the approximate
- 5 assessment in terms of money apportioned;
- 6 e. Be mailed to each affected landowner at the landowner's address as shown by
- 7 the tax rolls of the county in which the affected property is located. The board
- 8 may send the assessment list and notice by regular mail attested by an affidavit
- 9 of mailing signed by the attorney or secretary of the board; and
- 10 f. Be published once a week for two consecutive weeks in the newspaper of
- 11 general circulation in the area in which the affected lands are located.
- 12 2. ~~The date set for the hearing may not~~must ~~be less than thirty~~at least twenty days after
- 13 ~~the mailing of the notice is mailed.~~ At the hearing, the board may ~~make such~~
- 14 ~~alterations in~~alter the assessments as ~~in its opinion may be~~ the board deems just and
- 15 necessary to correct any error in the assessment but ~~must~~shall make the aggregate of
- 16 all assessments equal to either the total amount required to pay the entire cost of the
- 17 work for which the assessments are made, or the part of the cost to be paid by special
- 18 assessment. An assessment may not exceed the benefit as determined by the board
- 19 to the parcel of land or political subdivision assessed. The board ~~then~~ shall ~~then~~
- 20 confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate
- 21 ~~that the same~~stating the list is correct as confirmed by the board and shall file the list
- 22 in the office of the secretary.

23 **SECTION 14. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-16.1-23. Appeal to department of water resources.**

26 ~~After~~Within ten days after the hearing provided for in section 61-16.1-22, ~~affected;~~

- 27 1. Affected landowners and any political subdivision subject to assessment, having not
- 28 less than ~~twenty~~thirty-three percent of the possible votes as determined by section
- 29 61-16.1-20, ~~who~~which believe the assessment was not made fairly or equitably or the
- 30 project is not located or designed properly, may appeal to the department of water
- 31 resources by petition, ~~within ten days after the hearing on assessments,~~ to make a

1 review of the assessments and to examine the location and design of the proposed
2 project. Upon receipt of the petition the department shall examine the lands assessed
3 and the location and design of the proposed project, and if it appears the assessments
4 were not made equitably, the department may correct the assessments, and the
5 department's correction and adjustment of the assessment is final. If the department
6 believes the project was located or designed improperly, the department may order a
7 relocation and redesign that must be followed in the construction of the proposed
8 project.

9 2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the
10 costs of the department in the matter, any landowner or political subdivision claiming
11 the landowner or political subdivision will receive no benefit from the construction of a
12 new project may appeal that issue to the department ~~within ten days after the hearing~~
13 ~~on assessments~~. Upon an appeal by an individual landowner or political subdivision,
14 the department may determine whether there is any benefit to the landowner or
15 political subdivision, but not the specific amount of benefit. The determination of the
16 department regarding whether there is a benefit is final.

17 **SECTION 15. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

20 After the requirements of this chapter have been satisfied and a contract and bond for any
21 work for which a special assessment is to be levied have been approved by the water resource
22 board, the board may direct special assessments to be levied for the payment of appropriate
23 costs, and the secretary shall certify to the board the items of total cost to be paid by special
24 assessments so far as ~~they~~the costs have been ascertained. The certificate ~~shall~~must include
25 the estimated construction cost under the terms of any contract; ~~for the project;~~ a reasonable
26 allowance for the cost of extra work ~~which~~that may be authorized under the plans and
27 specifications; acquisition of right of way; engineering, fiscal agents' and attorney's fees for ~~any~~
28 services in connection with the authorization and financing of the ~~improvement;~~project; cost of
29 publication of required notices, ~~and;~~ printing of improvement warrants; cost necessarily paid for
30 damages caused by ~~such~~the improvement; interest during the construction period; and all
31 expenses incurred in making the improvement and levy of assessments.

1 In no event shall any contract or contracts be awarded which exceed A contract that
2 exceeds, by twenty percent or more, the estimated cost of the project as presented to and
3 approved by the affected landowners is prohibited.

4 **SECTION 16. AMENDMENT.** Section 61-16.1-26 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-26. Reassessment of benefits.**

7 ~~The~~A water resource board may hold at any time or, upon petition of any affected
8 landowner or assessed political subdivision ~~which has been assessed~~ after a project has been
9 in existence for at least one year, shall hold a hearing ~~for the purpose of determining to~~
10 determine the benefits of ~~such~~the project to each tract of land affected. Notice of the hearing
11 must be given by publication once each week for three consecutive weeks, beginning at least
12 thirty days before the hearing, in the newspaper ~~or newspapers~~ having general circulation in the
13 district and in the official county newspaper of each county in which the benefited lands are
14 located and by mailing notice of the hearing in an envelope clearly marked "ASSESSMENT
15 NOTICE" to each owner of land in the assessed district at the landowner's address as shown by
16 the tax rolls of the counties in which the affected property is located. The provisions of this
17 chapter governing the original determination of benefits and assessment of costs apply to any
18 reassessment of benefits carried out under this section. ~~The board may not be forced to make~~
19 ~~such~~Regardless of the number of petitions received, the board is not required to conduct a
20 reassessment more than once every ten years, ~~nor may any.~~ An assessment or balance thereof
21 supporting a project fund may not be reduced or impaired by reassessment or otherwise so
22 long as bonds payable out of ~~such~~the fund remain unpaid and moneys are not available in
23 ~~such~~the fund to pay all ~~such~~the bonds in full, with interest. Costs of maintenance must be
24 prorated in accordance with any adopted plan for reassessment of benefits ~~that has been~~
25 adopted.

26 **SECTION 17. AMENDMENT.** Section 61-16.1-27 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-27. Correction of errors and mistakes in special assessments ~~Requirements~~**
29 **governing.**

30 If mathematical errors or other ~~such~~ mistakes occur in making any assessment ~~resulting and~~
31 result in a deficiency in that assessment, the board shall cause additional assessments to be

1 made in a manner substantially complying with chapter 40-26 as ~~it~~the chapter relates to special
2 assessments.

3 **SECTION 18. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-16.1-28. Certification of assessments to county auditor.**

6 When a water resource board, by resolution, has caused special assessments to be levied
7 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
8 special assessments ~~shall~~must bear, ~~which. The interest rate shall~~may not exceed one and
9 one-half percent above the warrant rate. Interest on unpaid special assessments ~~shall~~must
10 commence on the date the assessments are ~~finally~~ confirmed finally by the board. Special
11 assessments may be certified and made payable in equal annual installments, the last of which
12 ~~shall~~must be due and payable not more than thirty years after the date of the warrants to be
13 paid. The secretary of the district shall certify to the county auditor of the county in which the
14 district is situated, or if the district embraces more than one county, to the county auditor of each
15 county in which district lands subject to ~~such~~the special assessments are situated, the total
16 amount assessed against ~~such~~ lands in that county and the proportion or percentage of ~~such~~the
17 amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district
18 also shall ~~also~~ file with the county auditor of each county in which district lands lie a statement
19 showing the cost of the project, the part ~~thereof~~of the cost, if any, ~~which will~~to be paid out of the
20 general taxes, and the part to be financed by special assessments. Funds needed to pay the
21 cost of maintaining a project may be raised in the same manner as funds were raised to meet
22 construction costs. If the project was financed in whole or in part through the use of special
23 assessments, the water resource board shall prorate the costs of maintaining ~~projects~~the
24 project in the same proportion as were the original costs of construction or, in the event a
25 reassessment of benefits has been adopted, the ~~costs shall be prorated~~board shall prorate
26 costs in accordance with the reassessment of benefits as ~~authorized by section 61-16.1-54.~~

27 **SECTION 19. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **61-16.1-42. Drains along and across public roads and railroads.**

30 1. Drains may be laid along, within the limits of, or across any public road or highway, but
31 not to the injury of ~~such~~the road. ~~In instances where it is~~lf, during the preparation of

1 the report required under section 61-16.1-17, a water resource board discovers it may
2 be necessary to run a drain across a highway, the water resource board shall notify
3 and solicit guidance from the department of transportation, the board of county
4 commissioners, or the board of township supervisors, as the case may be, ~~when~~
5 ~~notified by the water resource board to do so,~~as soon as practicable. If the water
6 resource board determines the drain must be run across the highway after considering
7 any guidance received from the department of transportation, board of county
8 commissioners, or board of township supervisors, the department of transportation,
9 board of county commissioners, or board of township supervisors shall make
10 necessary openings through the road or highway at its own expense, ~~and shall build~~
11 ~~and keep in repair all required~~ after receiving notice of the water resource board's
12 determination. The cost to build, maintain, and repair the culverts or bridges must be
13 allocated as provided under section 61-16.1-43. In instances where drains are laid
14 along or within the rights of way of roads or highways, the drains shall be maintained
15 and kept open by and at the expense of the water resource district concerned.

16 2. A drain may be laid along any railroad when necessary, but not to the injury of the
17 railroad, ~~and when it is necessary to run a drain across the railroad,~~ If, during the
18 preparation of the report required under section 61-16.1-17, a water resource board
19 discovers it may be necessary to run a drain across a railroad, the water resource
20 board shall notify and solicit guidance from the railroad company as soon as
21 practicable. If the water resource board determines the drain must be run across the
22 railroad after considering any guidance received from the railroad company, the
23 railroad company, when notified by the water resource board to do so of the water
24 resource board's determination, shall make the necessary opening through such
25 railroad, ~~shall~~ build the required bridges and culverts, and ~~shall~~ keep them in repair.

26 **SECTION 20. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-43. Construction of bridges and culverts - Costs.**

29 1. The water resource board shall construct ~~such~~any bridges or culverts over or in
30 connection with a drain as in its judgment may be necessary to furnish passage from
31 one part to another of any private farm or tract of land intersected by ~~such~~the drain.

1 The cost of such ~~construction shall~~ constructing the bridge or culvert must be charged
2 as part of the cost of constructing the drain, ~~and any such.~~ The bridge, or culvert, or
3 ~~passageway shall~~ must be maintained under the authority of the water resource board,
4 and the necessary expense ~~shall~~ must be deemed a part of the cost of maintenance.

5 ~~Whenever~~

6 2. When any bridge or culvert is to be constructed on a county or township highway
7 system over and across or in connection with a drain, the water resource board shall
8 notify the county or township with authority for the highway and provide the county or
9 township reasonable time to review and provide input on the plans for the bridge or
10 culvert. The bridge or culvert must be maintained by the water resource board, and the
11 necessary expense must be deemed a part of the cost of maintenance. If the water
12 resource board denies a request for maintenance submitted by the county or
13 township, the county or township may appeal the denial under chapter 28-34. The cost
14 of constructing such the bridge or culvert shall must be shared in the following manner:

15 1. a. If funds are available, the state water commission may, if funds are available,
16 participate in accordance with such rules and regulations as it may
17 prescribe according to the commission's rules or policies. The remaining cost
18 shall must be borne forty percent by the county and sixty percent by the district
19 which has that created the need for such the construction.

20 2. b. If, however, moneys have not been made funds are not available to the
21 commission for participation in accordance with subsection 1, then forty percent
22 of the cost of a bridge or culvert shall must be paid by the county and sixty
23 percent shall must be charged as the cost of the drain to the district.

24 3. Where such bridges or culverts are

25 c. If the bridge or culvert is constructed with federal financial participation, the costs
26 exceeding the amount of the federal participation shall must be borne by the
27 district and county according to the provisions of this section, as the case may
28 be.

29 **SECTION 21.** A new section to chapter 61-16.1 of the North Dakota Century Code is
30 created and enacted as follows:

1 **Assessment drain culverts.**

2 If, during the preparation of the report required under section 61-16.1-17 or during the
3 planning for maintenance or reconstruction of an existing assessment drain, a water resource
4 board discovers it may be necessary to install a culvert through a road not on the route of the
5 assessment drain, but which is within the assessment area and necessary for surface water to
6 reach the assessment drain, the water resource board shall notify and solicit guidance from the
7 department of transportation, board of county commissioners, or board of township supervisors,
8 as the case may be, as soon as practicable. If the water resource board determines the culvert
9 is necessary after considering any guidance received from the department of transportation,
10 board of county commissioners, or board of township supervisors, the department of
11 transportation, board of county commissioners, or board of township supervisors shall make
12 necessary openings through the road or highway at its own expense after receiving notice of
13 the water resource board's determination. The cost to build, maintain, and repair the culverts
14 must be allocated as provided under section 61-16.1-43.

15 **SECTION 22. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**
18 **Injunction - Definition.**

19 1. If a water resource board determines that an obstruction to a drain has been caused
20 by the negligent act or omission of a landowner or tenant, the board shall notify the
21 landowner by registered mail at the landowner's post-office address of record. A copy
22 of the notice also must ~~also~~ be sent to the tenant, if any. The notice must specify the
23 nature and extent of the obstruction; and the opinion of the board as to its cause, and
24 must state ~~that~~ if the obstruction is not removed within ~~such~~the period as the board
25 determines, but not less than fifteen days, the board shall procure removal of the
26 obstruction and assess the cost of the removal, or the portion the board determines
27 appropriate, against the property of the landowner responsible. The notice also must
28 ~~also~~ state ~~that~~ the affected landowner, within fifteen days of the date the notice is
29 mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand,
30 the board shall set a hearing date within fifteen days from the date the demand is
31 received. In the event of an emergency, the board may apply immediately ~~apply~~ to the

1 appropriate district court for an injunction prohibiting a landowner or tenant from
2 maintaining an obstruction. Assessments levied under ~~the provisions of~~ this section
3 must be collected in the same manner as other assessments authorized by this
4 chapter. If, in the opinion of the board, more than one landowner or tenant has been
5 responsible, the costs may be assessed on a pro rata basis in accordance with the
6 proportionate responsibility of the landowners. A landowner aggrieved by action of the
7 board under this section may appeal the decision of the board to the district court of
8 the county in which the land is located in accordance with the procedure provided in
9 section 28-34-01. A hearing ~~as provided for in~~ under this section is not a prerequisite to
10 an appeal. If a complaint is frivolous in the discretion of the board, the board may
11 assess the costs of the frivolous complaint against the complainant. If the obstruction
12 is located in a road ditch, the timing and method of removal must be approved by the
13 appropriate road authority before the notice required by this section is given and
14 appropriate construction site protection standards must be followed.

15 2. For the purposes of this section, "an obstruction to a drain" means a barrier to a
16 ~~watercourse, as defined by section 61-01-06,~~ geologic feature that conveys water or an
17 artificial drain, including if the ~~watercourse~~ geologic feature or drain is located within a
18 road ditch, ~~which~~ that materially affects the free flow of waters in the
19 ~~watercourse~~ geologic feature or drain.

20 3. Following removal of an obstruction to a drain, either by a water resource board or by
21 a party complying with an order of a water resource board, the board may assess its
22 costs against the property of the responsible landowner.

23 **SECTION 23. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
26 **Jurisdiction.**

27 ~~An appeal may be taken to the district court from any~~ An aggrieved person may appeal an
28 ~~order or decision of the~~ a water resource board ~~by any person aggrieved to the district court of~~
29 the county in which the land claimed to be affected adversely by the order or decision is located.

30 An appellant shall file an undertaking in the sum of two hundred dollars with ~~such~~ any sureties
31 ~~as may be approved~~ required by the clerk of the district court to which the appeal is taken. The

1 ~~undertaking must be conditioned that the appellant will prosecute on the appellant prosecuting~~
2 ~~the appeal without delay and will pay paying all costs adjudged against the appellant in the~~
3 ~~district court. The undertaking must be in favor of the water resource board as obligee, and may~~
4 ~~be sued on in the name of the obligee. The appeal must be taken to the district court of the~~
5 ~~county in which the land claimed to be affected adversely by the order or decision appealed~~
6 ~~from is located and~~An appeal under this section is governed by the procedure provided in
7 section 28-34-01.

8 **SECTION 24.** A new section to chapter 61-16.1 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Available mediation services.**

11 An aggrieved person may request assistance from the North Dakota mediation service to
12 resolve grievances arising from an order or action of a water resource board within thirty days of
13 the order or action. If the North Dakota mediation service agrees to assist the aggrieved person,
14 the water resource board shall participate in good faith in the mediation. Requesting assistance
15 or engaging in mediation under this section is not a prerequisite or a bar to appealing an order
16 or action of a water resource board. Deadlines to initiate appeals by the person requesting
17 assistance from the North Dakota mediation service under this section are tolled upon
18 submission of the request until the request is denied or mediation ends.

19 **SECTION 25.** A new section to chapter 61-16.1 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Designation of lateral drain.**

22 A determination by a water resource board as to whether an existing or proposed drain is a
23 lateral drain is a conclusive determination when entered on the records of the board.

24 **SECTION 26.** A new section to chapter 61-16.1 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Notice of letting of contracts.**

27 After the recording of percentage assessments as provided in section 61-16.1-22, the board
28 shall give at least ten days' notice of the time and place where contracts will be let for the
29 construction of the drain. The notice must be published at least once in a newspaper having
30 general circulation in the county.

1 **SECTION 27.** A new section to chapter 61-16.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Extension of time to contractors - Reletting unfinished part of contract.**

4 A water resource board may grant a reasonable extension of time for the completion of any
5 contract. If a board reasonably believes the work required under a contract will not be
6 completed by the agreed upon deadline, the board may relet any unfinished portion to the
7 lowest responsible bidder, and shall take security as before. The cost of completing the
8 unfinished portions over and above the contract price, and the expense of notices and reletting,
9 must be collected by the board from the parties first contracting. The board may not terminate a
10 contract without giving five days' notice to the contractor, provided the contractor may be found
11 or has a known place of residence in the county. The notice may be given to the contractor
12 personally or may be left at the contractor's place of residence.

13 **SECTION 28.** A new section to chapter 61-16.1 of the North Dakota Century Code is
14 created and enacted as follows:

15 **Procedure to construct or extend an assessment drain through or into two or more**
16 **counties.**

17 To construct or extend an assessment drain in two or more counties, a petition must be
18 presented to the several water resource boards for the area in which the drain will lie for the
19 establishment of the drain under this chapter. The boards shall hold a joint meeting and shall
20 determine the necessity or expediency of the establishment of the drain. To proceed with the
21 drain, the boards shall agree upon the proportion of damages and benefits to accrue to the
22 lands affected in each county, and for this purpose the boards shall consider the entire course
23 of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to
24 accrue to the lands in each county, the boards shall submit the points in controversy to the
25 department of water resources, and the department's decision is final. The boards may
26 apportion the cost of establishing and constructing the entire drain ratably and equitably upon
27 the lands in each county in proportion to the benefits to accrue to the county's lands. When the
28 boards have apportioned the costs, the boards shall make written reports of the apportionment
29 to the auditors of the several counties affected. The reports must show the portion of cost of the
30 entire drain to be paid by taxes upon the lands in each of the counties and must be signed by
31 the boards of all counties affected. Upon the filing of the reports, the several boards shall meet

1 and assess against the lands in each of the counties, ratably and equitably as provided by this
2 chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The
3 provisions of this chapter relating to drains within a single county govern the establishment,
4 construction, maintenance, repair, and cleanout of the drains.

5 **SECTION 29.** A new section to chapter 61-16.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Drain warrants - Terms and amounts.**

8 Drain costs must be paid upon order of the board by warrants signed by the chairman and
9 one other member of the board. The warrants are payable from the proper drain fund and, upon
10 maturity, are receivable by the treasurer for drain assessments supporting the fund. The
11 warrants may be issued at any time after the order establishing the drain has become final and
12 after incurring liability to pay for drain work to be financed by drain assessments and in
13 anticipation of levy and collection of the assessments. Every warrant not made payable on
14 demand must specify the date when it becomes payable. Demand warrants not paid for want of
15 funds must be registered by the county treasurer or, if the water resource district treasurer is
16 custodian of the drain funds, the water resource district treasurer and bear interest at a rate
17 determined by the board, not exceeding eight percent per annum. Warrants of specified
18 maturities bear interest according to their provisions at a rate or rates resulting in an average
19 net interest cost not exceeding twelve percent per annum if sold at private sale, and may be
20 issued with interest coupons attached. There is no interest rate ceiling on warrants sold at
21 public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain
22 warrants must state upon their faces the purpose for which they are issued and the drain fund
23 from which they are payable. The warrants may be used to pay drain obligations, or may be
24 sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants
25 sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid
26 warrants issued for the acquisition of right of way or the construction of a drain, including all
27 incidental costs in connection with the acquisition or construction, must be funded by a bond
28 issue within one hundred eighty days from and after the filing of the assessment of all costs with
29 the county auditor as provided in section 61-16.1-28, but this requirement may not be construed
30 as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day
31 period.

1 **SECTION 30.** A new section to chapter 61-16.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Settlement of unpaid warrants.**

4 A board of county commissioners may negotiate and execute a settlement with the owners
5 of drain warrants and pay the amount of the settlement from the general fund of the county if:

- 6 1. Drain warrants issued pursuant to the establishment of a drain in two or more counties
7 remain unpaid;
- 8 2. The amounts realized from the original assessments are not sufficient to pay the
9 warrants;
- 10 3. An additional assessment would be necessary to meet the deficit; and
- 11 4. The board finds the county has received benefits from the drain by reasons of public
12 health, convenience, or welfare and, as a result, may be liable for assessment or
13 reassessment and the credit of the county is or may be affected by the existence of
14 the outstanding and unpaid warrants.

15 **SECTION 31.** A new section to chapter 61-16.1 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Dissolution of drainage district - Return of unexpended assessments.**

18 The owners of property subject to fifty-one percent or more of the liability for maintaining
19 any drain as determined in section 61-16.1-20 may petition the board for the abandonment and
20 dissolution of the drain. Upon receipt of the petition, the board shall call a public hearing on the
21 petition and if the board finds the number of valid signatures to represent property liable to
22 fifty-one percent or more of the cost of upkeep of the drain, as determined by section
23 61-16.1-20, and the drainage district has no outstanding indebtedness, the board shall declare
24 the drain to be abandoned and the drainage district to be dissolved, record the declaration in
25 the minutes, publish the declaration in a newspaper having wide circulation in that county, and
26 return all unexpended assessments collected for the maintenance of the drain to the owners of
27 the assessed property on a pro rata basis in proportion with the amount originally assessed. If
28 the drainage district extends into two or more counties, the board upon receipt of the petition
29 shall convene in joint session and call the public meeting above provided. When a drain has
30 been abandoned and dissolved, the drain may be re-established in whole or in part only in the
31 same way as a new drain is established.

1 **SECTION 32.** A new section to chapter 61-16.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Consolidation of drainage district or districts into water resource districts.**

4 Upon resolution of the board of county commissioners or the water resource board, or upon
5 the filing with the board of county commissioners of a petition containing the signatures of
6 landowners possessing at least fifteen percent of the voting rights in one or more drainage
7 districts, computed in accordance with section 61-16.1-20, the board of county commissioners
8 shall set a date for hearing upon the establishment or expansion of a water resource district to
9 include the property contained within the drainage district. The board of county commissioners
10 shall publish notice of the time, place, and purpose of the hearing once each week for two
11 consecutive weeks in a newspaper of general circulation in the county, the second publication to
12 be not less than ten nor more than twenty days before the date set for hearing. If special
13 assessments remain outstanding upon any property within a drainage district to be affected by a
14 hearing under this section, the board of county commissioners shall notify by mail at least ten
15 days before the date set for the hearing all landowners of record subject to the special
16 assessments. If, at the time and place set for hearing, a majority of affected landowners
17 computed in accordance with section 61-16.1-20 file written objections, further proceedings
18 must be discontinued. If the majority does not object, the board of county commissioners shall
19 file with the state water commission a petition signed by a majority of the board and all further
20 proceedings must be governed by this chapter and chapter 61-16. Upon the establishment or
21 expansion of a water resource district to include one or more drainage districts, the board of
22 county commissioners, by resolution, shall dissolve the drainage districts and transfer all
23 property of the dissolved districts to the water resource district.

24 **SECTION 33.** A new section to chapter 61-16.1 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

27 If the board determines a drain, lateral drain, or ditch has been opened or established by a
28 landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall
29 notify the landowner by registered mail at the landowner's address of record. A copy of the
30 notice also must be sent to the tenant, if any. The notice must specify the nature and extent of
31 the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within

1 the period the board determines, but not less than fifteen days, the board shall procure the
2 closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board
3 determines, against the property of the landowner responsible. The notice also must state the
4 affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a
5 hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within
6 fifteen days from the date the demand is received. In the event of an emergency, the board may
7 apply immediately to the appropriate district court for an injunction prohibiting the landowner or
8 tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section
9 must be collected in the same manner as other assessments authorized by this chapter. If, in
10 the opinion of the board, more than one landowner or tenant has been responsible, the costs
11 may be assessed on a pro rata basis in accordance with the proportionate responsibility of the
12 landowners. A landowner aggrieved by action of the board under this section may appeal the
13 decision of the board to the district court of the county in which the land is located in
14 accordance with the procedure provided for in section 28-34-01. A hearing as provided for in
15 this section is not a prerequisite to an appeal.

16 **SECTION 34.** A new section to chapter 61-16.1 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Reconveyance of land no longer required for drainage.**

19 When land acquired for drainage is no longer required for drainage, the board of county
20 commissioners may reconvey the land to the present owner of the adjacent property if the
21 present owner of the adjacent property surrenders all warrants issued in payment of the land or
22 repays the amount of cash paid for the land.

23 **SECTION 35.** A new section to chapter 61-16.1 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Sinking funds and bonds.**

26 A water resource board shall establish a sinking fund for each issue of bonds, and the fund
27 must consist of all drain assessments made for the bonds, all warrants funded, all assessments
28 for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not
29 actually expended for the drain, the reserve fund authorized for purchase of tax delinquent
30 lands affected by the drain, all general tax levies for payment of obligations of the drain, and any
31 other moneys that may be appropriated to the sinking fund. Separate sinking funds must be

1 provided for each separate drain for which bonds have been issued. Until the purpose of the
2 sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose
3 other than payment of the bonds for which the fund was created.

4 **SECTION 36.** A new section to chapter 61-16.1 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Existing obligations and regulations.**

7 Except as specified, amendments to this chapter do not affect the validity of any valid
8 outstanding warrants, bonds, or other obligations of drainage districts, and all sinking funds
9 created for the payment of these obligations continue in force until the liquidation of the
10 obligations. All valid rules adopted by any board of county commissioners or board of drainage
11 commissioners remain in full force and effect until altered or repealed by the board.

12 **SECTION 37. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the
13 North Dakota Century Code is amended and reenacted as follows:

14 g. If the subsurface water management system will discharge into the watershed
15 area of an assessment drain, inclusion of the relevant property into the
16 assessment district for the assessment drain in accordance with the benefits the
17 property receives, provided the property is not assessed already for the
18 assessment drain. The water resource district may include the new property into
19 the assessment district, and determine the benefits and assessment amounts
20 under ~~chapters 61-21 and~~ chapter 61-16.1, without conducting the reassessment
21 of benefit proceedings under ~~sections 61-21-44 and~~ section 61-16.1-26, provided
22 the property is not assessed already for the assessment drain.

23 **SECTION 38. AMENDMENT.** Subsection 3 of section 61-32-03.2 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 3. If a subsurface water management system for which notification is required under
26 subsection 1 will discharge into the watershed area of an assessment drain, the water
27 resource board that receives the notice may require the relevant property to be
28 included in the assessment district for the assessment drain in accordance with the
29 benefits the property receives, provided the property is not assessed already for the
30 assessment drain. The water resource district also may include the property in the
31 assessment district and determine the benefits and assessment amounts under

1 ~~chapters 61-21 and chapter~~ 61-16.1, without conducting the reassessment of benefit
2 proceedings under ~~sections 61-21-44 and section~~ 61-16.1-26, provided the property is
3 not assessed already for the assessment drain.

4 **SECTION 39. REPEAL.** Section 61-16.1-01 and chapter 61-21 of the North Dakota Century
5 Code are repealed.