

HOUSE BILL NO. 1417

Introduced by

Representatives Gorder, Herbel

Senator Tallackson

1 A BILL for an Act to amend and reenact sections 61-16.1-51, 61-16.1-53, 61-21-43.1, 61-21-67,
2 and 61-32-07 of the North Dakota Century Code, relating to the time within which obstructions
3 to drains, noncomplying dikes or dams, and noncomplying drains must be removed or closed.

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

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

7 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**

8 **Injunction - Definition.** If ~~the~~ a water resource board determines that an obstruction to a drain
9 has been caused by the negligent act or omission of a landowner or tenant, the board shall
10 notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of
11 record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must
12 specify the nature and extent of the obstruction, the opinion of the board as to its cause, and
13 must state that if the obstruction is not removed within such period as the board ~~shall determine~~
14 determines, but not less than ~~thirty~~ fifteen days, the board shall procure removal of the
15 obstruction and assess the cost ~~thereof of the removal~~, or ~~such~~ the portion as the board ~~shall~~
16 ~~determine~~ determines appropriate, against the property of the landowner responsible. The
17 notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice
18 is mailed, may demand, in writing, a hearing on the matter. Upon receipt of ~~such~~ the demand
19 the board shall set a hearing date within fifteen days from the date the demand is received. In
20 the event of an emergency the board may immediately apply to the appropriate district court for
21 an injunction prohibiting a landowner or tenant from maintaining an obstruction. ~~Any~~
22 ~~assessments~~ Assessments levied under the provisions of this section must be collected in the
23 same manner as other assessments authorized by this chapter. If, in the opinion of the board,
24 more than one landowner or tenant has been responsible, the costs may be assessed on a pro

1 rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A
2 landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the
3 decision of the board to the district court of the county in which the land is located in
4 accordance with the procedure provided in section 28-34-01. A hearing as provided for in this
5 section is not a prerequisite to ~~such~~ an appeal.

6 For the purposes of this section, "an obstruction to a drain" means ~~any~~ a barrier to a
7 watercourse, as defined by section 61-01-06, or ~~any~~ an artificial drain, which materially affects
8 the free flow of waters in ~~such~~ the watercourse or drain.

9 **SECTION 2. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal**
12 **- Injunction.** Upon receipt of a complaint of unauthorized construction of a dike, dam, or other
13 device for water conservation, flood control, regulation, watershed improvement, or storage of
14 water, the water resource board shall promptly investigate and make a determination thereon.
15 If the board determines that a dam or other device, capable of retaining, obstructing, or
16 diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been
17 established or constructed by a landowner or tenant contrary to ~~the provisions of~~ this title or any
18 rules ~~promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or~~
19 ~~certified~~ mail at the landowner's post-office address of record. A copy of the notice must also
20 be sent to the tenant, if any. The notice must specify the nature and extent of the
21 noncompliance and must state that if the dike, dam, or other device is not removed within ~~such~~
22 the period as the board shall determine determines, but not less than ~~thirty~~ fifteen days, the
23 board shall cause the removal of the dike, dam, or other device and assess the cost ~~thereof of~~
24 the removal, or ~~such~~ the portion as the board shall determine determines, against the property
25 of the landowner responsible. The notice must also state that the affected landowner ~~may~~,
26 within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the
27 matter. Upon receipt of ~~such~~ the demand, the board shall set a hearing date within fifteen days
28 from the date the demand is received. In the event of an emergency, the board may
29 immediately apply to the appropriate district court for an injunction prohibiting the landowner or
30 tenant from constructing or maintaining the dike, dam, or other device, or ordering the
31 landowner to remove the dike, dam, or other device. ~~Any assessments~~ Assessments levied

1 under ~~the provisions of~~ this section must be collected in the same manner as other
2 assessments authorized by this chapter. If, in the opinion of the board, more than one
3 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in
4 proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the
5 board under ~~the provisions of~~ this section may appeal the decision of the board to the district
6 court of the county in which the land is located in accordance with the procedure provided in
7 section 28-34-01. A hearing as provided for in this section is not prerequisite to ~~such~~ an
8 appeal.

9 **SECTION 3. AMENDMENT.** Section 61-21-43.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal -**

12 **Injunction.** If the board determines that an obstruction to a drain has been caused by the
13 negligent act or omission of a landowner or landowner's tenant, the board shall notify the
14 landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the
15 notice must also be sent to the tenant, if any. The notice must specify the nature and extent of
16 the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is
17 not removed within ~~such~~ the period as the board determines, but not less than ~~thirty~~ fifteen
18 days, the board shall procure removal of the obstruction and assess the cost ~~thereof~~ of the
19 removal, or ~~such~~ the portion as the board determines, against the property of the landowner
20 responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of
21 the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt
22 of the demand the board shall set a hearing date within fifteen days from the date the demand
23 is received. In the event of an emergency the board may, immediately upon learning of the
24 existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting
25 ~~such a~~ the landowner or landowner's tenant to maintain ~~such an~~ the obstruction. ~~Any~~
26 ~~assessments~~ Assessments levied under this section must be collected in the same manner as
27 other assessments authorized by this chapter. If, in the opinion of the board, more than one
28 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in
29 accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner
30 aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of
31 the board to the district court of the county in which the land is located in accordance with the

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

3 **SECTION 4. AMENDMENT.** Section 61-21-67 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal -**
6 **Injunction.** If the board determines that a drain, lateral drain, or ditch has been opened or
7 established by a landowner or tenant contrary to ~~the provisions of~~ this chapter or any rules
8 adopted by the board, the board shall notify the landowner by registered mail at the landowner's
9 post office of record. A copy of the notice must also be sent to the tenant, if any. The notice
10 must specify the nature and extent of the noncompliance and must state that if the drain, lateral
11 drain, or ditch is not closed or filled within ~~such~~ the period ~~as~~ the board determines, but not less
12 than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or
13 ditch and assess the cost ~~thereof of the closing or filling, of such or the portion as~~ the board
14 determines, against the property of the landowner responsible. The notice must also state that
15 the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in
16 writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing
17 date within fifteen days from the date the demand is received. In the event of an emergency,
18 the board may immediately apply to the appropriate district court for an injunction prohibiting the
19 landowner or tenant from maintaining the drain, lateral drain, or ditch. ~~Any assessments~~
20 Assessments levied under this section must be collected in the same manner as other
21 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. ~~Any~~ A landowner
24 aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of
25 the board to the district court of the county in which the land is located in accordance with the
26 procedure provided for in section 28-34-01. A hearing as provided for in this section is not a
27 prerequisite to ~~such~~ an appeal.

28 **SECTION 5. AMENDMENT.** Section 61-32-07 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction**
31 **- Frivolous complaints.** Only a landowner experiencing flooding or adverse effects from an

1 unauthorized drain constructed before January 1, 1975, may file a complaint with the water
2 resource board. Any person may file a complaint about an unauthorized drain constructed after
3 January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource
4 board shall promptly investigate and make a determination of the facts with respect to the
5 complaint. If the board determines that a drain, lateral drain, or ditch has been opened or
6 established by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules adopted
7 by the board, the board shall notify the landowner by registered mail at the landowner's
8 post-office address of record. A copy of the notice must also be sent to the tenant, if known.
9 The notice must specify the nature and extent of the noncompliance and must state that if the
10 drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board
11 determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of
12 the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, or ~~such the~~
13 portion ~~as~~ the board determines, against the property of the landowner responsible. The notice
14 must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is
15 mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the
16 board shall set a hearing date within fifteen days from the date the demand is received. In the
17 event of an emergency, the board may immediately apply to the appropriate district court for an
18 injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral
19 drain, or ditch and ordering the closure of the illegal drain. ~~Any assessments~~ Assessments
20 levied under this section must be collected in the same manner as assessments authorized by
21 chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been
22 responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of
23 the landowners. ~~Any~~ A person aggrieved by action of the board under this section may appeal
24 the decision of the board to the district court of the county in which the land is located in
25 accordance with the procedure provided in section 28-34-01. A hearing as provided for in this
26 section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the
27 board, the complaint is frivolous, the board may assess the costs of the frivolous complaint
28 against the complainant.