

HOUSE BILL NO. 1148

Introduced by

Natural Resources Committee

(At the request of the State Water Commission)

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

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

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

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

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

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

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

3 **61-16.1-38. Permit to construct or modify dam, dike, or other device required -**

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

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

1 **61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal**
2 **- Injunction.** Upon receipt of a complaint of unauthorized construction of a dike, dam, or other
3 device for water conservation, flood control, regulation, watershed improvement, or storage of
4 water, the water resource board shall promptly investigate and make a determination thereon.
5 If the board determines that a dam or other device, capable of retaining, obstructing, or
6 diverting more than ~~twelve and one-half~~ twenty-five acre-feet [~~15448.52~~ 30837.04 cubic meters]
7 of water, has been established or constructed by a landowner or tenant contrary to this title or
8 any rules adopted by the board, the board shall notify the landowner by registered mail at the
9 landowner's post-office address of record. A copy of the notice must also be sent to the tenant,
10 if any. The notice must specify the nature and extent of the noncompliance and must state that
11 if the dike, dam, or other device is not removed within the period the board determines, but not
12 less than fifteen days, the board shall cause the removal of the dike, dam, or other device and
13 assess the cost of the removal, or the portion the board determines, against the property of the
14 landowner responsible. The notice must also state that the affected landowner, within fifteen
15 days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon
16 receipt of the demand, the board shall set a hearing date within fifteen days from the date the
17 demand is received. In the event of an emergency, the board may immediately apply to the
18 appropriate district court for an injunction prohibiting the landowner or tenant from constructing
19 or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike,
20 dam, or other device. Assessments levied under this section must be collected in the same
21 manner as other assessments authorized by this chapter. If, in the opinion of the board, more
22 than one landowner or tenant has been responsible, the costs may be assessed on a pro rata
23 basis in proportion to the responsibility of the landowners. A person aggrieved by action of the
24 board under this section may appeal the decision of the board to the district court of the county
25 in which the land is located in accordance with the procedure provided in section 28-34-01. A
26 hearing as provided for in this section is not prerequisite to an appeal.