

HOUSE BILL NO. 1331

Introduced by

Representatives Aarsvold, Hanson, Metcalf

Senators Heitkamp, Lindaas, Wardner

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

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

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

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

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

1 of the county in which the land is located in accordance with the procedure provided in section
2 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

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

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

9 **61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal -**
10 **Injunction.** If the board determines that an obstruction to a drain, including if the drain is
11 located within a road ditch, has been caused by the negligent act or omission of a landowner or
12 landowner's tenant, the board shall notify the landowner by registered mail at the landowner's
13 post office of record. A copy of the notice must also be sent to the tenant, if any. The notice
14 must specify the nature and extent of the obstruction, the opinion of the board as to its cause,
15 and must state that if the obstruction is not removed within the period the board determines, but
16 not less than fifteen days, the board shall procure removal of the obstruction and assess the
17 cost of the removal, or the portion the board determines, against the property of the landowner
18 responsible. The notice must also state that the affected landowner, within fifteen days of the
19 date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the
20 demand the board shall set a hearing date within fifteen days from the date the demand is
21 received. In the event of an emergency the board may, immediately upon learning of the
22 existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting
23 the landowner or landowner's tenant to maintain the obstruction. Assessments levied under
24 this section must be collected in the same manner as other assessments authorized by this
25 chapter. If, in the opinion of the board, more than one landowner or tenant has been
26 responsible, the costs may be assessed on a pro rata basis in accordance with the
27 proportionate responsibility of the landowners. A landowner aggrieved by action of the board
28 under this section may appeal the decision of the board to the district court of the county in
29 which the land is located in accordance with the procedure provided for in section 28-34-01. A
30 hearing as provided for in this section is not a prerequisite to an appeal.