

Introduced by

1 A BILL for an Act to create and enact fourteen 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 61-01-06, 61-01-23, 61-05-02.1, 61-16.1-02, 61-16.1-09, 61-16.1-09.1, 61-16.1-12.1,
4 61-16.1-15, 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-22, 61-16.1-23,
5 61-16.1-24, 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
6 61-16.1-54, subdivision g of subsection 4 of section 61-32-03.1, and subsection 3 of section
7 61-32-03.2 of the North Dakota Century Code, relating to water resource boards and
8 procedures for assessment projects undertaken by water resource boards; and to repeal
9 sections 61-16.1-01 and 61-16.1-21 and chapter 61-21 of the North Dakota Century Code,
10 relating to water resource districts, water resource boards, assessment procedures and
11 requirements, and drains.

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

13 **SECTION 1. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-01-06. Watercourse and waterway - ~~Definition~~Definitions.**

- 16 1. A watercourse entitled to the protection of the law is constituted if there is a sufficient
17 natural and accustomed flow of water to form and maintain a distinct and a defined
18 channel. The supply of water is not required to be continuous or from a perennial living
19 source. The criteria for constituting a watercourse are satisfied if the flow arises
20 periodically from natural causes and reaches a plainly defined channel of a permanent
21 character. If requested by a water resource board, the department of water resources
22 shall determine whether a watercourse is constituted.
- 23 2. For purposes of this title, unless the context otherwise requires, "waterway" means a
24 natural, geologic feature that conveys surface water over land.

1 **SECTION 2. AMENDMENT.** Section 61-01-23 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-01-23. Investigation or removal of obstructions in ~~channel~~waterway.**

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

7 1. Upon a request from a landowner affected by a natural or artificial obstruction to a
8 waterway, the state water commission, any water resource district, any municipality,
9 any board of county commissioners, and any federal agency authorized to construct
10 works ~~for prevention of~~ to prevent damage by floods or ~~for abatement of~~ abate stream
11 pollution, ~~may shall~~ notify, and upon the entity's own volition, may notify, the owner of
12 lands lying adjacent to the obstructed waterway as follows:

- 13 a. The owner of adjacent lands shall remove the obstruction within thirty days of
14 receiving the notice; and
- 15 b. If the obstruction is not removed within the thirty days, the entity that sent the
16 notice may enter upon the owner's lands lying adjacent to such watercourse~~the~~
17 waterway to investigate or remove, or cause to be removed from the bed,
18 channel, or banks of ~~such watercourse~~ the waterway any obstructions ~~which that~~
19 prevent or hinder the free flow of water or passage of ice therein, at the owner's
20 expense. ~~However, such entry~~

21 2. Entry upon adjacent lands under this section must be by the most accessible route
22 and the entering ~~agency~~ entity is responsible to the landowner for any damage.

23 **SECTION 3. AMENDMENT.** Section 61-05-02.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

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

1 **SECTION 4. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-02. Definitions.**

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

6 1. "Affected land" or "affected property" means land or property subject to special
7 assessment or condemnation for a project.

8 2. "Affected landowners" means landowners whose land is subject to special
9 assessment or condemnation for a project.

10 ~~2-3.~~ "Assessment drain" means any natural watercourse opened, or proposed to be
11 opened, and improved for the purpose of drainage, and any artificial drain of any
12 nature or description constructed for the purpose of drainage, including dikes and
13 appurtenant works, which area drain financed in whole or in part by special
14 assessment. This definition may include more than one watercourse or artificial
15 channel constructed for the purpose of drainage when the watercourses or channels
16 drain land within a practical drainage area.

17 ~~3-4.~~ "Assessment project" means any project financed in whole or in part by a special
18 assessment.

19 5. "Benefited property" means property that accrues benefits from a project.

20 6. "Benefits" means the extent to which society and economies impacted by a project are
21 made better off through lower costs, fewer damages, or enhancements.

22 7. "Cleaning out and repairing a drain" means deepening and widening a drain and
23 removing obstructions or sediment, and any repair necessary to return the drain to a
24 satisfactory and useful condition.

25 8. "Commission" means the state water commission.

26 ~~4-9.~~ "Conservation" means planned management of water resources to prevent
27 exploitation, destruction, neglect, or waste.

28 ~~5-10.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
29 requisite proceedings regarding the removal of obstructions to a drain, removal of a
30 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
31 construction costs; all reasonable attorney's fees and legal expenses; all reasonable

1 engineering fees, including investigation and determination costs; compliance
2 inspections; ~~and~~ necessary technical memorandum and deficiency review; and all
3 costs associated with any hearing conducted by a district, including preparation and
4 issuance of any findings of fact and any final closure order.

5 ~~6-11.~~ "District" means a water resource district.

6 ~~7-12.~~ "Drain" means any natural watercourse opened, or proposed to be opened, and
7 improved for drainage, and any artificial channel constructed for drainage. The term
8 includes dikes and appurtenant works and may include more than one watercourse or
9 artificial channel when the watercourses or channels drain land within a practical
10 drainage area.

11 ~~13.~~ "Frivolous" means allegations and denials in any complaint filed with a district made
12 without reasonable cause and not in good faith.

13 ~~8-14.~~ "Lateral drain" means a drain constructed after the establishment of an original drain
14 or drainage system and which flows into the original drain or drainage system from
15 outside the limits of the original drain.

16 ~~15.~~ "Practical drainage area" means, for assessment drains, the practical drainage area
17 determined by the survey and examination required under section 61-16.1-17.

18 ~~16.~~ "Project" means any undertaking for water conservation; flood control; water supply;
19 water delivery; erosion control and watershed improvement; drainage of surface
20 waters; collection, processing, and treatment of sewage; ~~or~~ discharge of sewage
21 effluent; or any combination thereof, ~~including~~ of purposes in this subsection, and
22 includes incidental features of any such the undertaking.

23 ~~9-17.~~ "Water resource board" or "board" means the water resource district's board of
24 managers.

25 **SECTION 5. AMENDMENT.** Section 61-16.1-09 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-16.1-09. Powers of water resource board.**

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

- 29 1. Sue and be sued in the name of the district.
30 2. Exercise the power of eminent domain as follows:

1 a. Except as permitted under subdivision b, the board shall comply with title 32 for
2 the purpose of acquiring and securing by eminent domain any rights, titles,
3 interests, estates, or easements necessary or proper to carry out the duties
4 imposed by this chapter, and particularly to acquire the necessary rights in land
5 for the construction of dams, flood control projects, and other water conservation,
6 distribution, and supply works of any nature and to permit the flooding of lands,
7 and to secure the right of access to such dams and other devices and the right of
8 public access to any waters impounded thereby.

9 b. (1) If the interest sought to be acquired is an easement for a right of way for any
10 project authorized in this chapter for which federal or state funds have been
11 made available, the district may acquire the right of way by quick take
12 eminent domain as authorized by section 16 of article I of the Constitution of
13 North Dakota, after the district attempts to purchase the easement for the
14 right of way by:

15 (a) Conducting informal negotiations for not less than sixty days.

16 (b) If informal negotiations fail, the district shall engage in formal
17 negotiations by:

18 [1] Sending the landowner an appraisal and written offer for just
19 compensation, which includes a specific description of the exact
20 location of the right of way, by certified mail or commercial
21 delivery requiring a signed receipt, and receiving the signed
22 receipt or documentation of constructive notice.

23 [2] Sending the landowner a written request for a meeting by
24 certified mail or commercial delivery requiring a signed receipt if
25 there is no agreement regarding compensation or no response to
26 the written offer within fifteen days of receipt, and receiving the
27 signed receipt or documentation of constructive notice.

28 [3] Sending the landowner a written notice, by certified mail or
29 commercial delivery requiring a signed receipt, of intent to take
30 possession of the right of way if there is no agreement regarding
31 compensation or no response to the written request for a

1 meeting within thirty days of receipt, and receiving the signed
2 receipt or documentation of constructive notice.

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

6 (3) A district may not include or utilize any reference to quick take eminent
7 domain during negotiations to acquire the necessary easement for a right of
8 way. If formal negotiation efforts fail, the district shall request approval from
9 the board of county commissioners of the county in which the right of way is
10 located to take possession of the right of way by quick take eminent domain.
11 After receiving the request, the county commissioners shall hold a public
12 meeting and give the landowner thirty days' notice of the meeting to allow
13 the landowner to attend. After receiving verification from the district that
14 there has been no reference or threat of quick take eminent domain by the
15 district during negotiations, the commissioners shall vote on whether to
16 approve the taking of the easement for a right of way using quick take
17 eminent domain. If the county commissioners approve the use of quick take
18 eminent domain by a majority vote, the district may take immediate
19 possession of the right of way, but not a blanket easement, if the district files
20 an affidavit by the chairman of the water resource board which states the
21 district has fulfilled the required negotiation steps and deposits the amount
22 of the written offer with the clerk of the district court of the county in which
23 the right of way is located.

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

- 1 (5) If ownership of a right of way has not terminated, ownership of a right of way
2 acquired under this subdivision terminates automatically when the district no
3 longer needs the right of way for the purpose for which it was acquired.
- 4 3. Accept funds and property or other assistance, financial or otherwise, from federal,
5 state, and other public or private sources for the purposes of aiding the construction or
6 maintenance of water conservation, distribution, and flood control projects; and
7 cooperate and contract with the state or federal government, or any department or
8 agency thereof, or any municipality within the district, in furnishing assurances and
9 meeting local cooperation requirements of any project involving control, conservation,
10 distribution, and use of water.
- 11 4. Procure the services of engineers and other technical experts, and employ an attorney
12 or attorneys to assist, advise, and act for it in its proceedings.
- 13 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all
14 dams and water conservation and management devices of every nature and water
15 channels, and to control and regulate the same and all reservoirs, artificial lakes, and
16 other water storage devices within the district.
- 17 6. Maintain and control the water levels and the flow of water in the bodies of water and
18 streams involved in water conservation and flood control projects within the district and
19 regulate streams, channels, drains, or watercourses and the flow of water therein
20 them by changing, widening, deepening, or straightening ~~the same~~, or otherwise
21 improving ~~the use and capacity thereof~~ them; or by cleaning out and repairing a drain.
- 22 7. Regulate and control water for the prevention of floods and flood damages by
23 deepening, widening, straightening, or diking the channels or floodplains of any stream
24 or watercourse within the district, and construct reservoirs or other structures to
25 impound and regulate such waters.
- 26 8. Make rules and regulations concerning the management, control, regulation, and
27 conservation of waters and prevent the pollution, contamination, or other misuse of the
28 water resources, streams, or bodies of water included within the district.
- 29 9. Do all things reasonably necessary and proper to preserve the benefits to be derived
30 from the conservation, control, and regulation of the water resources of this state.

- 1 10. Construct, operate, and maintain recreational facilities, including beaches, swimming
2 areas, boat docking and landing facilities, toilets, wells, picnic tables, trash
3 receptacles, and parking areas, and to establish and enforce rules and regulations for
4 the use thereof.
- 5 11. Have, in addition to any powers provided in this chapter, the authority to construct an
6 assessment drain in accordance with the ~~procedures and provisions~~requirements of
7 this chapter ~~61-24~~.
- 8 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in
9 its corporate name for its use and control both real and personal property and
10 easements and rights of way within or without the limits of the district for all purposes
11 authorized by law or necessary to the exercise of any other stated power.
- 12 13. Convey, sell, dispose of, or lease personal and real property of the district as provided
13 by this chapter.
- 14 14. Authorize and issue warrants to finance construction of water conservation and flood
15 control projects, assess benefited property for part or all of the cost of such projects,
16 and require appropriations and tax levies to maintain sinking funds for construction
17 warrants on a cash basis at all times.
- 18 15. Borrow money within the limitations imposed by this chapter for projects herein
19 authorized and pledge security for the repayment of such loans.
- 20 16. Order or initiate appropriate legal action to compel the entity responsible for the
21 maintenance and repair of any bridge or culvert to remove from under, within, and
22 around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris,
23 and any artificial block which hinders or decreases the flow of water through such
24 bridge or culvert.
- 25 17. Order or initiate appropriate legal action to compel the cessation of the destruction of
26 native woodland bordering within two hundred feet [60.96 meters] of that portion of a
27 riverbank subject to overflow flooding that will cause extensive property damage, or in
28 the alternative, order, that, if such destruction is permitted, the party or parties
29 responsible for the destruction must, when the board has determined that such
30 destruction will cause excessive property damage from overflow flooding due to the
31 erosion or blocking of the river channel, plant a shelterbelt which meets the

1 specifications of the board. In the event the native woodland within such area has
2 already been destroyed, the board may, in its discretion, order the planting of a
3 shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of
4 such river channel where overflow flooding has caused extensive property damage.
5 For purposes of this subsection, the words "riverbank" and "river channel" relate to
6 rivers as defined in the United States geological survey base map of North Dakota,
7 edition of 1963. The provisions of this subsection shall not be construed to limit,
8 impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local
9 entity to construct and maintain any flood control, irrigation, recreational, or municipal
10 or industrial water supply project.

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

21 19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate,
22 maintain, and repair sanitary and storm sewer systems, or combinations thereof,
23 including sewage and water treatment plants, and regulate the quantity of sewage
24 effluent discharged from municipal lagoons; and contract with the United States
25 government, or any department or agency thereof, or any private or public corporation
26 or limited liability company, the government of this state, or any department, agency,
27 or political subdivision thereof, or any municipality or person with respect to any such
28 systems.

29 20. Develop water supply systems, store and transport water, and provide, contract for,
30 and furnish water service for domestic, municipal, and rural water purposes, irrigation,
31 milling, manufacturing, mining, metallurgical, and any and all other beneficial uses,

1 and fix the terms and rates therefor. Each district may acquire, construct, operate, and
2 maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines,
3 tunnels, and any and all works, facilities, improvements, and property necessary
4 therefor.

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

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

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

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

19 25. Install artificial subsurface drainage systems.

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

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

23 If lands assessed for drainage benefits are not contiguous to the drain, the water resource
24 board may exercise eminent domain to acquire a right of way easement to the drain over the
25 land of others. The right of way, when acquired, is the property of the water resource district in
26 which the lands are located. The board may issue warrants in a sum sufficient to pay the
27 damages assessed for the right of way. The warrants must be drawn upon the proper county
28 treasurer or, if the water resource district treasurer is custodian of the drain funds, water
29 resource district treasurer, and are payable out of drain funds in the hands of the treasurer
30 which have been collected for the construction of the drain for which the right of way is sought.

1 **SECTION 7. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

4 1. A water resource board may undertake the snagging, clearing, and maintaining of
5 natural watercourses and the debris removal of bridges and low-water crossings. The
6 board may finance the project in whole or in part with funds raised through the
7 collection of a special assessment levied against the land and premises benefited by
8 the project. The benefits of a project must be determined in the manner provided in
9 section ~~61-16.1-1711~~ of this Act. Revenue from an assessment under this section may
10 not be used for construction of a drain or reconstruction or maintenance of an existing
11 assessment drain. Any question as to whether the board is maintaining a natural
12 watercourse or is constructing a drain or reconstructing or maintaining an existing
13 assessment drain must be resolved by the department of water resources. All
14 provisions of this chapter apply to assessments levied under this section except:

- 15 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
16 agricultural lands and may not exceed fifty cents annually for each five hundred
17 dollars of taxable valuation of nonagricultural property; ~~and~~
- 18 b. If the assessment is for a project costing less than one hundred thousand dollars,
19 no action is required for the establishment of the assessment district or the
20 assessments except the board must approve the project and assessment by a
21 vote of two-thirds of the members and the board of county commissioners of the
22 county in which the project is located must approve and levy the assessments to
23 be made by a vote of two-thirds of its members.
- 24 (1) If a board that undertakes a project finds the project will benefit lands
25 outside water resource district boundaries, the board shall provide notice to
26 the water resource board where the benefited lands are located together
27 with the report prepared under section 61-16.1-17.
- 28 (2) The board of each water resource district containing lands benefited by a
29 project must approve the project and assessment by a vote of two-thirds of
30 its members. The board of county commissioners in each county that

1 contains lands benefited by a project must approve and levy the
2 assessment to be made by a vote of two-thirds of its members.
3 (3) If a project and assessment is not approved by all affected water resource
4 boards and county commission boards, the board of each water resource
5 district and the board of county commissioners of each county shall meet to
6 ensure all common water management problems are resolved pursuant to
7 section 61-16.1-10. In addition, the water resource board that undertakes
8 the project may proceed with the project if the board finances the cost of the
9 project and does not assess land outside the boundaries of the district.

10 c. All revenue from an assessment under this section must be exhausted before a
11 subsequent assessment covering any portion of lands subject to a prior
12 assessment may be levied.

13 2. Before an assessment may be levied under this section, a public hearing must be held
14 and attended by a quorum of the affected water resource boards and a quorum of the
15 affected boards of county commissioners. The hearing must be preceded by notice as
16 to date, time, location, and subject matter published in the official newspaper in the
17 county or counties in which the proposed assessment is to be levied. The notice must
18 be published at least ten days but not more than thirty days before the public hearing.

19 **SECTION 8. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for**
22 **certain improvements.**

23 1. A water resource board may enter into an agreement with any federal or state agency,
24 or any combination thereof of federal or state agencies, for the construction of a
25 project, under the terms of which the contract for the work is to be let by the federal or
26 state agency or any combination thereof of federal or state agencies. If under the terms
27 of the agreement at least fifty percent of the total cost of constructing the project is to
28 be paid by the agency or agencies and if any portion of the cost of the project is to be
29 paid by the levy of special assessments, the board may by resolution may create a
30 project assessment district for the purpose of levying to levy special assessments to
31 finance the amount that the district will be obligated to pay in accordance with the

1 agreement, over and above any other funds ~~which are~~ on hand and properly available
2 for that purpose. The assessment district must ~~be of a size and form as to~~ include all
3 ~~properties which in the judgment of~~ benefited property as determined by the board,
4 after consultation with a registered engineer designated by the board for that purpose,
5 ~~will be benefited by the construction of the proposed project,~~ and the board shall direct
6 the engineer to prepare a map showing the boundaries of the proposed assessment
7 district.

8 2. The board by resolution shall ~~by resolution~~ declare the necessity of the project, set
9 forth the general nature and purpose of the proposed project, estimate the total cost of
10 the project; and the approximate amount or fraction of the cost ~~which~~ the district will be
11 obligated to pay under the agreement, and the fact ~~that~~ this amount, or a lesser
12 amount as the board may specify, is proposed to be paid by the levy of special
13 assessments upon benefited property within the assessment district ~~determined to be~~
14 ~~benefited by the project.~~ The board shall ~~cause~~email the resolution of necessity
15 ~~together with,~~ a copy of the map showing the boundaries of the assessment district,
16 and a notice stating the date and time by which the owners of any property liable to be
17 specially assessed for the proposed project must ~~file their~~cast votes on the proposed
18 project with the secretary of the board ~~to be mailed to each~~ affected landowner
19 ~~affected by the proposed project~~ as determined by the tax rolls of the county in which
20 the affected property is located. The board may send the material by certified mail or
21 by regular mail attested by an affidavit of mailing signed by the attorney or secretary of
22 the board. The notice must ~~also~~ set forth the time and place ~~where~~ the board shall
23 meet to determine whether the project is approved. The notice must ~~also~~ be published
24 once in a newspaper of general circulation in the district and once in the official county
25 newspaper of each county in which the ~~benefited lands are~~ affected property is located.
26 Within five days after the first mailing of the resolution the board shall ~~cause~~serve a
27 copy of the resolution ~~to be personally served~~ upon any county, city, or township, in its
28 corporate capacity which may be benefited directly or indirectly from the construction
29 of the proposed project and upon any county ~~which~~that may become liable for any
30 deficiency in the fund to be created for the project, by delivering a copy of the
31 resolution to any member of the governing body ~~thereof~~ of the county, city, or township.

1 3. The meeting must be held not less than thirty days after the mailing of the resolution,
2 at which time the board shall determine whether the project is approved. If the board
3 finds that fifty percent or more of the total votes filed are against a proposed project,
4 then the board may not proceed further with the proposed project. If the board finds
5 that less than fifty percent of votes filed are against the proposed project, the board
6 may proceed with the project. In any assessment district created under this section,
7 the board may dispense with ~~all other~~the requirements of this chapter, other than
8 those stated in this section.

9 4. After the contract for the work has been let, the board may issue warrants on the fund
10 of the project for the total amount of the cost ~~thereof~~of the project, and the board,
11 without holding the hearing required by section 61-16.1-18, shall ~~proceed to~~ determine
12 and levy any assessments against benefited property ~~benefited by the project~~ and
13 prepare an assessment list ~~all~~ in accordance with the procedures required by
14 section 11 of this Act and sections 61-16.1-21~~61-16.1-22~~ through 61-16.1-24. The
15 provisions of sections 61-16.1-25 through 61-16.1-36 are applicable to the
16 assessments and the special warrants issued pursuant to this section.

17 **SECTION 9. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-15. Financing project**~~Initiating project financed through revenue bonds,~~
20 **general taxes, or special assessments - Apportionment of benefits**~~Bond required.~~

21 A water resource board ~~shall have the authority~~, either upon request or by its own motion,
22 ~~to~~may acquire needed interest in property and provide for the cost of construction, alteration,
23 repair, operation, and maintenance of a project through issuance of improvement warrants or
24 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
25 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
26 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
27 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
28 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~
29 ~~benefited by the project in proportion to and in accordance with benefits accruing thereto. The~~
30 ~~board shall assess the proportion of the cost of the project, or the part of the cost to be financed~~
31 ~~with funds raised through levy and collection of special assessments which any lot, piece, or~~

1 parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or
2 township which is benefited thereby. In determining assessments, the water resource board
3 shall carry out to the maximum extent possible the water management policy of this chapter that
4 upstream landowners must share with downstream landowners the responsibility to provide for
5 the proper management of surface waters. A request under this section must be in writing and
6 be accompanied by a bond in a sum the water resource board deems sufficient to pay all
7 expenses of the board related to the petition in case the petition is denied. If the proposed
8 project is an assessment drain, the request must identify the starting point, terminus, and
9 general course of the proposed drain and be signed by at least two owners of property that
10 would be drained by the proposed drain. If among the leading purposes of the proposed drain
11 are benefits to the health, convenience, or welfare of the residents of any city, the petition must
12 be signed by a sufficient number of the property owners of the city to satisfy the board there is a
13 public demand for the drain. If a petition under this section is approved by voters under section
14 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay
15 any expenses incurred by the board related to the petition.

16 **SECTION 10. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-16.1-17. ~~Financing of special improvements~~ Assessment projects - Procedure -**
19 **Engineer report.**

20 When it is proposed to finance in whole or in part the construction of a project with a water
21 resource board receives a petition or approves a motion to construct a project with funds raised
22 through the collection of special assessments levied against lands and premises benefited by
23 construction and maintenance of such project, the water resource board shall examine the
24 proposed project, and if in its opinion, If the water resource board decides further proceedings
25 are warranted, it the board shall adopt a resolution and declare that it declaring constructing and
26 maintaining the proposed project is necessary to construct and maintain the project. The
27 resolution shall briefly state, identifying the nature and purpose of the proposed project, and
28 shall designate designating a registered engineer to assist the board. As soon as practicable,
29 the board shall publish the resolution in the newspaper of general circulation in each area in
30 which lands that reasonably may be condemned or subject to assessment for the project are
31 located. For the purpose of making examinations or surveys, the board or its employees the

1 board's agents, after written notice to each landowner at the landowner's address as shown by
2 the tax rolls of the county in which the affected property is located, may enter upon any land on
3 which the proposed project is located or any other lands necessary to gain access. The
4 engineer shall prepare profiles, plans, and specifications, and total estimated costs of the
5 proposed project and estimates of the total cost thereof. The estimate of costs prepared by the
6 engineer shall~~must~~ include acquisition of right~~the cost to acquire rights of way and shall be in-~~
7 sufficient detail to allow~~be sufficiently detailed for the board to determine the probable share of~~
8 the total costs that will~~to~~ be assessed against each of the affected landowners in the proposed
9 project assessment district under section 11 of this Act.

10 **SECTION 11.** A new section to chapter 61-16.1 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Determining costs, benefits, and assessments - Limitations - Certification.**

- 13 1. For each proposed assessment project, the board or the board's agents shall inspect
14 all lots, pieces, and parcels of land which may be subject to assessment for the
15 proposed project to gather information necessary to calculate the benefits, in dollars,
16 of the project to each lot, piece, or parcel. In determining benefits the board shall
17 consider, among other factors, property values, degree of improvement of properties,
18 and productivity. The calculation of benefits must occur before the hearing on the
19 project under section 61-16.1-18.
- 20 2. For each proposed assessment project that will cost one million dollars or more, the
21 water resource board shall prepare a cost-benefit analysis of the project before the
22 board may hold a hearing on the project under section 61-16.1-18. To prepare the
23 cost-benefit analysis, the board shall use the economic analysis process developed
24 under section 61-03-21.4 and calculate, in dollars, the total benefits anticipated from
25 the project and the total costs anticipated for the project. If the calculated dollar
26 amount of benefits does not exceed the calculated dollar amount of costs, the board
27 may not levy special assessments for the project.
- 28 3. The board shall determine the proportion of the total cost of acquiring right of way and
29 constructing and maintaining the project in accordance with, but not exceeding, the
30 amount of benefits anticipated to accrue to:

- 1 a. Any county, township, or city, in its corporate capacity, which may be benefited
2 directly or indirectly by the project.
- 3 b. Any lot, piece, or parcel of land which is directly benefited by the project.
- 4 4. Property belonging to the United States is exempt from assessment for projects unless
5 the United States has provided for the payment of any assessment that may be levied
6 against the property for benefits received. Benefited property belonging to counties,
7 cities, school districts, park districts, and townships is not exempt from assessment,
8 and political subdivisions whose property is assessed shall provide for the payment of
9 the assessments, installments, and interest by the levy of taxes according to law. Any
10 county, township, or city assessed in its corporate capacity for benefits received shall
11 provide for the payment of the assessments, installments, and interest from the
12 political subdivision's general fund or by levy of a general property tax against all the
13 taxable property in the political subdivision in accordance with law. A tax limitation
14 provided by any statute of this state does not apply to tax levies made by a political
15 subdivision for the purpose of paying any special assessments made in accordance
16 with this chapter.
- 17 5. The board shall prepare a list identifying the benefits and assessments, in dollars,
18 allocated to each lot and parcel of land for the project. A certificate signed by a
19 majority of the members of the board must be attached to the list and state the
20 assessments in the list are based on a correct determination of the benefits to the
21 assessed land described to the best of the members' judgment. The certificate also
22 must identify the several items of expense included in the assessment.

23 **SECTION 12. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-16.1-18. Hearing on assessment project - Notice - ContentsResults of cost and**
26 **benefit calculations.**

- 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 61-16.1-2111 of this Act, the water resource
29 board shall fix a date and place for a public hearing on the proposed project. The
30 place of hearing must be in the vicinity of the proposed project and must be

1 convenient and accessible for the majority of the landowners subject to assessment
2 for the project or whose property 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 benefited by the~~
6 ~~improvement and the amount assessed against each. At least ten days before the~~
7 ~~hearing, the board shall file with the county auditor of each county or counties in which~~
8 ~~the project is or will be located the list showing the percentage assessment against~~
9 ~~each parcel of land benefited by the proposed project and the approximate~~
10 ~~assessment in terms of money apportioned thereto. Notice of the filing must be~~
11 ~~included in the notice of hearing. Notices results, in dollars, of the board's calculations~~
12 ~~required under section 11 of this Act and the engineer's calculations of costs for the~~
13 ~~project.~~

14 3. The water resource board shall provide notice of the hearing which must contain:
15 a. Include a copy of the petition, if any, and the resolution of the board as well as;
16 b. Specify the time and place where the board will conduct of the hearing. The notice
17 of hearing must specify the general nature;
18 c. Identify the beginning, terminus, and general course of the project as finally
19 determined by the engineer and the board. The notice of hearing must also
20 specify;
21 d. Specify when and where votes concerning the proposed project may be filed. The
22 :
23 e. Include the assessment list showing the percentage assessment against each
24 parcel of land benefited by the proposed project and the approximate
25 assessment in terms of money apportioned thereto, along with a copy of the
26 notice of the hearing, must be results, in dollars, of the board's calculations
27 required under section 11 of this Act and the engineer's calculations of costs for
28 the project;
29 f. Be mailed with a ballot to vote on the proposed project to each affected
30 landowner at the landowner's address as shown by the tax rolls of the county or
31 counties in which the affected property is located. The board may send the

1 ~~assessment list and notice~~ and ballot by regular mail attested by an affidavit of
2 mailing signed by the attorney or secretary of the board. ~~The board shall cause~~
3 ~~the notice of hearing to be;~~ and

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

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

17 **SECTION 13. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
18 amended and reenacted as follows:

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

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

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

19 **SECTION 14. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-16.1-20. Voting right or powers of landowners.**

22 ~~In order that there may be~~The allocation of voting rights among affected landowners on the
23 question of establishing a proposed project must provide a fair relation~~relationship~~ between the
24 amount of liability for assessments and the power of objecting to the establishment of a
25 ~~proposed~~the project, ~~the voting rights of affected landowners on the question of establishing the~~
26 ~~project are as provided in this section.~~ The landowner or landowners of tracts of land affected
27 by the project. Affected landowners have one vote for each dollar of assessment thatto which
28 the land is subject ~~to~~ or one vote for each dollar of the assessed valuation of land condemned
29 for the project, as determined in accordance with title 57. The governing body of any county,
30 township, or city to be assessed also has one vote for each dollar of assessment against
31 ~~such~~the county, township, or city. There may be only one vote for each dollar of assessment,

1 regardless of the number of owners of such a tract of land. ~~Where~~If there is more than one
2 owner of such ~~the~~the land exists, the votes must be prorated among ~~them~~the owners in accordance
3 with each owner's property interest. A written power of attorney authorizes an agent to protest a
4 project on behalf of any ~~the~~the affected landowner ~~or landowners~~that executed the power of
5 attorney.

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

8 **61-16.1-22. Assessment Costs, benefits, and assessment list to be published - Notice**
9 **of hearing on assessments - Alteration of assessments - Confirmation of assessment list**
10 **- Filing.**

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

22 The notice must:

- 23 a. Include a copy of the order establishing the project;
24 b. Specify the time and place of the hearing;
25 c. Identify the beginning, terminus, and general course of the project as finally
26 determined by the engineer and the board;
27 d. Include the results, in dollars, of the calculations required under section 11 of this
28 Act and the calculation of costs prepared by the engineer;
29 e. Be mailed to each affected landowner at the landowner's address as shown by
30 the tax rolls of the county in which the affected property is located. The board

1 may send the assessment list and notice by regular mail attested by an affidavit
2 of mailing signed by the attorney or secretary of the board; and
3 f. Be published once a week for two consecutive weeks in the newspaper of
4 general circulation in the area in which the affected lands are located.
5 2. The date set for the hearing ~~may not~~must be ~~less than thirty~~at least twenty days after
6 the ~~mailing of the notice is mailed~~. At the hearing, the board may ~~make such~~
7 ~~alterations in~~alter the assessments as ~~in its opinion may be~~the board deems just and
8 necessary to correct any error in the assessment but ~~must~~shall make the aggregate of
9 all assessments equal to either the total amount required to pay the entire cost of the
10 work for which the assessments are made, or the part of the cost to be paid by special
11 assessment. An assessment may not exceed the benefit as determined by the board
12 to the parcel of land or political subdivision assessed. The board then shall ~~then~~
13 confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate
14 ~~that the same~~stating the list is correct as confirmed by the board and shall file the list
15 in the office of the secretary.

16 **SECTION 16. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-16.1-23. Appeal to department of water resources.**

19 ~~After~~Within twenty days after the hearing ~~provided for in~~meeting at which the water
20 resource board approves the final assessment list required under section 61-16.1-22, affected:

21 1. Affected landowners and any political subdivision subject to assessment, having not
22 less than ~~twenty~~thirty-three percent of the possible votes as determined by section
23 61-16.1-20, ~~whewhich~~which believe the assessment was not made fairly or equitably or the
24 project is not located or designed properly, may appeal to the department of water
25 resources by petition, ~~within ten days after the hearing on assessments, to make a~~
26 review of the assessments and ~~to~~ examine the location and design of the proposed
27 project. Upon receipt of the petition the department shall examine the lands assessed
28 and the location and design of the proposed project, and if it appears the assessments
29 were not made equitably, the department may correct the assessments, subject to
30 section 11 of this Act, and the department's correction and adjustment of the
31 assessment is final. If the department believes the project was located or designed

1 improperly, the department may order a relocation and redesign that must be followed
2 in the construction of the proposed project.

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

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

13 **61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

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

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

29 **SECTION 18. AMENDMENT.** Section 61-16.1-26 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.1-26. Reassessment of benefits.**

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

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

23 **61-16.1-27. Correction of errors and mistakes in special assessments ~~–Requirements~~**
24 **~~governing.~~**

25 If mathematical errors or other ~~such~~ mistakes occur in making any assessment ~~resulting and~~
26 result in a deficiency in that assessment, the board shall cause additional assessments to be
27 made in a manner substantially complying with chapter 40-26 as ~~it~~the chapter relates to special
28 assessments.

29 **SECTION 20. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.1-28. Certification of assessments to county auditor.**

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

23 **SECTION 21. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-16.1-42. Drains along and across public roads and railroads.**

26 1. Drains may be laid along, within the limits of, or across any public road or highway, but
27 not to the injury of ~~such~~the road. ~~In instances where it is~~ If, during the preparation of
28 the report required under section 61-16.1-17, a water resource board discovers it may
29 be necessary to run a drain across a highway, the water resource board shall notify
30 and solicit guidance from the department of transportation, ~~the~~ board of county
31 commissioners, or ~~the~~ board of township supervisors, as the case may be, ~~when~~

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

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

22 **SECTION 22. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-43. Construction of bridges and culverts - Costs.**

25 1. The water resource board shall construct ~~such~~ any bridges or culverts over or in
26 connection with a drain as in its judgment may be necessary to furnish passage from
27 one part to another of any private farm or tract of land intersected by ~~such~~ the drain.
28 The cost of ~~such construction shall~~ constructing the bridge or culvert must be charged
29 as part of the cost of constructing the drain, and any such. The bridge, or culvert, or
30 passageway shall must be maintained under the authority of the water resource board,
31 and the necessary expense shall must be deemed a part of the cost of maintenance.

1 ~~Whenever~~

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

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

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

21 3. ~~Where such bridges or culverts are~~

22 c. Upon request from the water resource board, the county shall request federal
23 emergency funds for the construction. If the bridge or culvert is constructed with
24 federal financial participation, including any federal emergency funds, the costs
25 exceeding the amount of the federal participation shall must be borne by the
26 district and county according to the provisions of this section, as the case may
27 be.

28 **SECTION 23.** A new section to chapter 61-16.1 of the North Dakota Century Code is
29 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 24. 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 aan artificial drain has
20 been caused by the negligent act or omission of a landowner or tenant, the board shall
21 notify the landowner by registered mail at the landowner's post-office address of
22 record. A copy of the notice also must also be sent to the tenant, if any. The notice
23 must specify the nature and extent of the obstruction; and the opinion of the board as
24 to its cause, and must state ~~that~~ if the obstruction is not removed within ~~sueh~~the period
25 as the board determines, but not less than fifteen days, the board shall procure
26 removal of the obstruction and assess the cost of the removal, or the portion the board
27 determines appropriate, against the property of the landowner responsible. The notice
28 also must also state ~~that~~ the affected landowner, within fifteen days of the date the
29 notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the
30 demand, the board shall set a hearing date within fifteen days from the date the
31 demand is received. In the event of an emergency, the board may apply immediately

1 apply to the appropriate district court for an injunction prohibiting a landowner or
2 tenant from maintaining an obstruction. Assessments levied under the provisions of
3 this section must be collected in the same manner as other assessments authorized
4 by this chapter. If, in the opinion of the board, more than one landowner or tenant has
5 been responsible, the costs may be assessed on a pro rata basis in accordance with
6 the proportionate responsibility of the landowners. A landowner aggrieved by action of
7 the board under this section may appeal the decision of the board to the district court
8 of 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, or an artificial drain, including if the~~
17 ~~watercourse or whether or not the artificial~~ drain is located within a road ditch, ~~which~~
18 ~~that~~ materially affects the free flow of waters in the ~~watercourse or~~ drain.

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

22 **SECTION 25. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
25 **Jurisdiction.**

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

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

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

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

9 **Available mediation services.**

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

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

20 **Designation of lateral drain.**

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

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

25 **Notice of letting of contracts.**

26 After filing the final assessment list with the county auditor as provided in section
27 61-16.1-28, the board shall give at least ten days' notice of the time and place where contracts
28 will be let for the construction of the drain. The notice must be published at least once in a
29 newspaper having general circulation in the county.

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

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

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

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

13 **Procedure to construct or extend an assessment drain through or into two or more**
14 **counties.**

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

1 provisions of this chapter relating to drains within a single county govern the establishment,
2 construction, maintenance, repair, and cleanout of the drains.

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

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

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

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

1 **Settlement of unpaid warrants.**

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

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

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

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

16 If the board determines a drain, lateral drain, or ditch has been opened or established by a
17 landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall
18 notify the landowner by registered mail at the landowner's address of record. A copy of the
19 notice also must be sent to the tenant, if any. The notice must specify the nature and extent of
20 the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within
21 the period the board determines, but not less than fifteen days, the board shall procure the
22 closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board
23 determines, against the property of the landowner responsible. The notice also must state the
24 affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a
25 hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within
26 fifteen days from the date the demand is received. In the event of an emergency, the board may
27 apply immediately to the appropriate district court for an injunction prohibiting the landowner or
28 tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section
29 must be collected in the same manner as other assessments authorized by this chapter. If, in
30 the opinion of the board, more than one landowner or tenant has been responsible, the costs
31 may be assessed on a pro rata basis in accordance with the proportionate responsibility of the

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

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

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

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

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

14 **Sinking funds and bonds.**

15 A water resource board shall establish a sinking fund for each issue of bonds, and the fund
16 must consist of all drain assessments made for the bonds, all warrants funded, all assessments
17 for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not
18 actually expended for the drain, the reserve fund authorized for purchase of tax delinquent
19 lands affected by the drain, all general tax levies for payment of obligations of the drain, and any
20 other moneys that may be appropriated to the sinking fund. Separate sinking funds must be
21 provided for each separate drain for which bonds have been issued. Until the purpose of the
22 sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose
23 other than payment of the bonds for which the fund was created.

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

26 **Existing obligations and regulations.**

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

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

3 g. If the subsurface water management system will discharge into the watershed
4 area of an assessment drain, inclusion of the relevant property into the
5 assessment district for the assessment drain in accordance with the benefits the
6 property receives, provided the property is not assessed already for the
7 assessment drain. The water resource district may include the new property into
8 the assessment district, and determine the benefits and assessment amounts
9 under ~~chapters 61-21 and~~ chapter 61-16.1, without conducting the reassessment
10 of benefit proceedings under ~~sections 61-21-44 and~~ section 61-16.1-26, provided
11 the property is not assessed already for the assessment drain.

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

14 3. If a subsurface water management system for which notification is required under
15 subsection 1 will discharge into the watershed area of an assessment drain, the water
16 resource board that receives the notice may require the relevant property to be
17 included in the assessment district for the assessment drain in accordance with the
18 benefits the property receives, provided the property is not assessed already for the
19 assessment drain. The water resource district also may include the property in the
20 assessment district and determine the benefits and assessment amounts under
21 ~~chapters 61-21 and~~ chapter 61-16.1, without conducting the reassessment of benefit
22 proceedings under ~~sections 61-21-44 and~~ section 61-16.1-26, provided the property is
23 not assessed already for the assessment drain.

24 **SECTION 39. REPEAL.** Sections 61-16.1-01 and 61-16.1-21 and chapter 61-21 of the
25 North Dakota Century Code are repealed.