

Introduced by

Senator Wardner

Representative Schmidt

1 | A BILL for an Act to create and enact ~~six~~five new sections to chapter 61-16.1 of the North
2 | Dakota Century Code, relating to procedures for drain permits, assessments projects, and
3 | operations of water resource districts; to amend and reenact section 11-23-02, subsection 1 of
4 | section 54-57-03, sections 61-02-01.4 and 61-05-02.1, ~~subsections~~subsections 1 and 3 of
5 | section 61-16-08, ~~section~~sections 61-16-08.1 and 61-16.1-02, ~~subsections~~subsections 4 and 16
6 | of section 61-16.1-09, and sections 61-16.1-09.1, 61-16.1-09.2, 61-16.1-10, 61-16.1-15,
7 | 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23,
8 | 61-16.1-24, 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-29, 61-16.1-30, 61-16.1-31,
9 | 61-16.1-32, 61-16.1-33, 61-16.1-34, 61-16.1-39.2, 61-16.1-42, 61-16.1-43, 61-16.1-45,
10 | 61-16.1-46, 61-16.1-47, 61-16.1-48, 61-16.1-51, 61-16.1-53, 61-16.1-53.1, 61-16.1-54,
11 | 61-16.1-58, 61-16.1-62, and 61-16.1-63 of the North Dakota Century Code, relating to
12 | assessment projects, operations of water resource districts, and removal of obsolete text; to
13 | repeal sections 61-16.1-01 and 61-16.1-61 ~~and chapters~~, chapter 61-21, and ~~61-32~~sections
14 | 61-32-07, 61-32-08, and 61-32-10 of the North Dakota Century Code, relating to assessment
15 | drains, ~~drain permits~~, noncompliant drains, and obsolete provisions; and to provide a penalty.

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

17 | **SECTION 1. AMENDMENT.** Section 11-23-02 of the North Dakota Century Code is
18 | amended and reenacted as follows:

19 | **11-23-02. Auditor to prepare budget of county expenditures.**

20 | The county auditor shall prepare an annual budget for the general fund, each special
21 | revenue fund, and each debt service fund of the county in the form prescribed by the state
22 | auditor. The budget must set forth specifically:

- 23 | 1. The detailed breakdown of the estimated revenues and appropriations requested for
24 | each fund for the ensuing year.

2. The detailed breakdown of the revenues and expenditures for each fund for the preceding year.
3. The detailed breakdown of estimated revenues and expenditures for each fund for the current year.
4. The transfers in or out for each fund for the preceding year and the estimated transfers in or out for the current year and the ensuing year.
5. The beginning and ending balance of each fund or estimates of the balances for the preceding year, current year, and ensuing year.
6. The tax levy request for any funds levying taxes for the ensuing year.
7. The certificate of levy showing the amount levied for each fund and the total amount levied.
8. The budget must be prepared on the same basis of accounting used by the county for its annual financial reports.
9. The amount of cash reserve for the general fund and each special revenue fund, not to exceed seventy-five percent of the appropriation for the fund. For the funds of a water resource district in the county, the county auditor shall include a report indicating whether the water resource district is in compliance with the seventy-five percent limitation.

SECTION 2. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. ~~But~~ However, appeals hearings pursuant to section 61-03-22 ~~and drainage permit appeals from water resource boards to the state engineer pursuant to chapter 61-32~~ 61-16.1 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and

1 rehabilitation for the parole board in accordance with chapter 12-59, regarding parole
2 violations; job discipline and dismissal appeals to the board of higher education;
3 Individuals With Disabilities Education Act and section 504 due process hearings of
4 the superintendent of public instruction; and chapter 37-19.1 veterans' preferences
5 hearings for any agency must be conducted by the office of administrative hearings in
6 accordance with applicable laws.

7 **SECTION 3. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-02-01.4. State water commission cost-share policy.**

10 The state water commission shall review, gather stakeholder input on, and rewrite as
11 necessary the commission's "Cost-share Policy, Procedure and General Requirements" and
12 "Project Prioritization Guidance" documents. The commission's cost-share policy:

- 13 1. Must provide a water supply project is eligible for a cost-share up to seventy-five
14 percent of the total eligible project costs.
- 15 2. May not determine program eligibility of water supply projects based on a population
16 growth factor. However, a population growth factor may be used in prioritizing projects
17 for that purpose.
- 18 3. Must consider all project costs potentially eligible for reimbursement, except the
19 commission shall exclude operations expense, regular maintenance, and removal of
20 vegetative materials and sediment; for assessment drains, and may exclude
21 operations expense and regular maintenance for other projects. ~~Snagging and~~
22 ~~clearing of watercourses are~~ Changing the flow capacity of drains by widening or
23 deepening channels is not regular maintenance. The commission shall require a water
24 project sponsor to maintain a capital improvement fund from the rates charged
25 customers for future extraordinary maintenance projects as a condition of funding an
26 extraordinary maintenance project.
- 27 4. May not determine program eligibility of water supply projects based on affordability.
28 However, affordability may be used in prioritizing projects for that purpose.
- 29 5. Notwithstanding subsection 3, snagging and clearing is not deemed regular
30 maintenance and is eligible for a cost-share.

1 **SECTION 4. AMENDMENT.** Section 61-05-02.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

4 Notwithstanding section 61-05-02, an irrigation district may not be created if the primary
5 purpose of the district is to provide drainage benefits to residents of the district. A drainage
6 project proposed, undertaken, approved, or subject to assessment by an irrigation district also
7 is subject to the drain permit requirements under chapter ~~61-32~~61-16.1. Drainage benefits
8 provided by an irrigation district may not impact the authority of a water resource board to
9 assess for drainage projects under chapter 61-16.1 ~~or 61-21~~.

10 **SECTION 5. AMENDMENT.** Subsection 1 of section 61-16-08 of the North Dakota Century
11 Code is amended and reenacted as follows:

12 1. When a water resource district has been created, any resident landowner in the
13 district, except a county commissioner, is eligible, subject to the provisions of this
14 section, for appointment to the water resource board. ~~After June 30, 1985, when~~When
15 the term of office of a district manager has expired, the manager's successor shall
16 hold office for three years from the first day of January next following the date of the
17 successor's appointment. The term of office of a manager does not terminate until the
18 successor in office is appointed and qualified. In case the office of any district
19 manager becomes vacant, the manager appointed to fill the vacancy shall serve the
20 unexpired term of the manager whose office became vacant. Within three months after
21 the start of an individual's term as a district manager, the individual shall attend a
22 course on water management, and each district manager shall attend a course on
23 water management every three years during the manager's term.

24 a. The water management course must be conducted by an employee of the office
25 of state engineer.

26 b. The office of state engineer shall record each water resource board member's
27 attendance at the course and submit the record of attendance to the county
28 auditor of the county in which the district is situated.

29 c. If a water resource board member has not completed a water management
30 course in the time allowed under this section, the member may not vote on water
31 resource board business and is not entitled to receive compensation or

reimbursement under this section until the member completes the required water management course.

d. Each January, a county auditor shall submit a report to the board of county commissioners which indicates whether the members of the board of each water resource district encompassing land situated in the county have fulfilled the educational requirements in this section.

SECTION 6. AMENDMENT. Subsection 3 of section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

3. A manager may be removed from the board by the board of county commissioners after ~~it appears to~~ the board of county commissioners determines by competent evidence; and after a public hearing; if so requested by the manager subject to removal, at which hearing the manager must be apprised of and allowed ample opportunity to repudiate the evidence, ~~that~~; the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

SECTION 7. AMENDMENT. Section 61-16-08.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08.1. Appointment of alternate board member due to conflict of interest or illness.

When a member of a water resource board has a conflict of interest in a specific issue before the board or is unable to fulfill the duties of a board member because of physical or mental illness, the county commissioners ~~may~~shall appoint a person to serve as an alternate to the disqualified board member. If the disqualification is for a conflict of interest, the alternate board member ~~is to~~shall serve only for the purpose of deciding the particular issue causing the conflict. If the disqualification is for physical or mental illness, the alternate board member ~~is to~~must be appointed by the county commissioners only for one meeting at a time.

SECTION 8. AMENDMENT. Section 61-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

- 1 1. "Affected landowners" means landowners whose land is subject to special
2 assessment or condemnation for a project, regardless of whether the land is within the
3 water resource district making the assessment.
- 4 2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~
5 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~
6 ~~nature or description constructed for the purpose of drainage, including dikes and~~
7 ~~appurtenant works, which area drain financed in whole or in part by special~~
8 ~~assessment. This definition may include more than one watercourse or artificial~~
9 ~~channel constructed for the purpose of drainage when the watercourses or channels~~
10 ~~drain land within a practical drainage area.~~
- 11 3. "Benefit" means an increase in the value of land resulting from removing a burden on
12 the land or making the land more adaptable for the purpose for which the land is used.
- 13 4. "Cleaning out and repairing a drain" means removing obstructions or sediment from a
14 drain and making repairs to the drain necessary to return the drain to a satisfactory
15 and useful condition.
- 16 ~~4.5.~~ "Commission" means the state water commission.
- 17 ~~4.5.6.~~ "Conservation" means planned management of water resources to prevent
18 exploitation, destruction, neglect, or waste.
- 19 ~~5.6.7.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
20 requisite proceedings regarding the removal of obstructions to a drain, removal of a
21 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
22 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
23 engineering fees, including investigation and determination costs; compliance
24 inspections; and necessary technical memorandum and deficiency review; and all
25 costs associated with any hearing conducted by a district, including preparation and
26 issuance of any findings of fact and any final closure order.
- 27 ~~6.7.8.~~ "District" means a water resource district.
- 28 ~~7.8.9.~~ "Drain" means any natural water course opened, or proposed to be opened, and
29 improved for drainage, and any artificial drain constructed for drainage. The term
30 includes dikes and appurtenant works.

1 ~~9.10.~~ "Frivolous" means allegations and denials in any complaint filed with a district made
2 without reasonable cause and not in good faith.

3 ~~8.10.11.~~ "Maintenance" means repairing a structure or otherwise bringing a structure back to
4 the structure's original design. The term does not include widening or deepening the
5 channel of a drain with the result of increasing the flow capacity of the drain as
6 compared to the flow capacity of the drain when the most recent permit for the drain
7 was issued.

8 ~~11.12.~~ "Practical drainage area" means the area of land to be drained by a proposed
9 assessment drain and must be determined by the petition submitted to a water
10 resource board for the assessment drain and the survey and examination required
11 under section 61-16.1-17.

12 ~~12.13.~~ "Project" means any undertaking for water conservation; flood control; water supply;
13 water delivery; erosion control and watershed improvement; drainage of surface-
14 waters; collection, processing, and treatment of sewage; or discharge of sewage
15 effluent; or any combination thereof, including of purposes in this subsection, and
16 includes incidental features of any such the undertaking.

17 ~~9.13.14.~~ "Right of way" means a corridor for the public which is deeded to or taken by an
18 assessment district.

19 15. "Water resource board" means the water resource district's board of managers.

20 **SECTION 9. AMENDMENT.** Subsection 4 of section 61-16.1-09 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 4. ~~Procure~~ If the appropriate county engineer is unable to provide necessary engineering
23 services, procure the services of engineers and other technical experts, and, if the
24 appropriate state's attorney is unable to provide necessary legal services, employ an
25 attorney ~~or attorneys~~ to assist, advise, and act for ~~it in its proceedings~~ for the board.

26 **SECTION 10. AMENDMENT.** Subsection 16 of section 61-16.1-09 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 16. ~~Order or initiate appropriate legal action to compel~~ Notify the entity responsible for the
29 maintenance and repair of any bridge or culvert when action is needed to remove from
30 under, within, and around ~~such the~~ the bridge or culvert all dirt, rocks, weeds, brush,

1 shrubbery, other debris, and any artificial block ~~which~~that hinders or decreases the
2 flow of water through ~~sueh~~the bridge or culvert.

3 **SECTION 11. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

6 4. A water resource board may undertake the snagging, clearing, and maintaining of
7 natural watercourses and the debrisment of bridges and low-water crossings. To the extent
8 practicable, water resource boards in a common basin shall prepare and execute a basinwide
9 plan for snagging, clearing, and maintaining natural watercourses; and removing debris from
10 bridges and low-water crossings. The board may finance the project in whole or in part with
11 funds raised through the collection of a special assessment levied against the land and
12 premises benefited by the project. The benefits of a project must be determined in the manner
13 provided in section ~~61-16.1-17~~61-16.1-21. Revenue from an assessment under this section may
14 not be used for construction of a drain or reconstruction or maintenance of an existing
15 assessment drain. Any question as to whether the board is maintaining a natural watercourse ~~or~~
16 is, constructing a drain, or reconstructing or maintaining an existing assessment drain must be
17 determined by the state engineer. ~~All provisions of this chapter apply to assessments levied~~
18 ~~under this section except:~~

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

1 (2) ~~The board of each water resource district containing lands benefited by a~~
2 ~~project must approve the project and assessment by a vote of two-thirds of~~
3 ~~its members. The board of county commissioners in each county that~~
4 ~~contains lands benefited by a project must approve and levy the~~
5 ~~assessment to be made by a vote of two-thirds of its members.~~

6 (3) ~~If a project and assessment is not approved by all affected water resource~~
7 ~~boards and county commission boards, the board of each water resource~~
8 ~~district and the board of county commissioners of each county shall meet to~~
9 ~~ensure that all common water management problems are resolved pursuant~~
10 ~~to section 61-16.1-10. In addition, the water resource board that undertakes~~
11 ~~the project may proceed with the project if the board finances the cost of the~~
12 ~~project and does not assess land outside the boundaries of the district.~~

13 e. ~~All revenue from an assessment under this section must be exhausted before a~~
14 ~~subsequent assessment covering any portion of lands subject to a prior~~
15 ~~assessment may be levied.~~

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

24 **SECTION 12. AMENDMENT.** Section 61-16.1-09.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.1-09.2. Release of easements – Procedure property interests no longer needed.**

27 ~~When it deems such action to be in the best interests of the district or other political~~
28 ~~subdivision, a water resource board or~~

29 1. The governing body of another political subdivision, including a water resource
30 district, may release easements assigned to it the political subdivision from the state for
31 the construction, operation, and maintenance of dams, along with access to the dams,

1 if the dams are no longer useful and the governing body deems the release to be in
2 the best interest of the political subdivision.

3 2. A board of county commissioners may reconvey land previously acquired for drainage
4 but no longer required for drainage to the present owner of the adjacent property if the
5 owner surrenders all warrants issued in payment of the land or repays the amount of
6 cash paid for the land.

7 **SECTION 13. AMENDMENT.** Section 61-16.1-10 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-16.1-10. Responsibilities and duties of water resource board.**

10 Each water resource board shall:

- 11 1. Meet jointly with other water resource boards within a common river basin at least
12 twice each year at times and places as mutually agreed upon for the purpose of
13 reviewing and coordinating efforts for the maximum benefit of the entire river basin.
- 14 2. Cooperate with other water resource boards of a common river basin and provide
15 mutual assistance to the maximum extent possible.
- 16 3. Exercise jointly with other water resource districts within a river basin to effectively
17 resolve the significant and common water resource management ~~problem or~~ problems
18 of the river basin or region and to jointly develop a comprehensive plan for the river
19 basin or region.
- 20 4. Encourage all landowners to retain water on the land to the maximum extent possible
21 in accordance with sound water management policies, and carry out to the maximum
22 extent possible the water management policy that upstream landowners and districts
23 that have artificially altered the hydrologic scheme ~~must~~shall share with downstream
24 landowners the responsibility of providing for proper management and control of
25 surface waters.
- 26 5. Address and consider fully in the planning of any surface water project the
27 downstream impacts caused by the project. A determination of whether to proceed
28 with the construction of a project ~~shall~~must be based on the following principles:
 - 29 a. Reasonable necessity of the project.
 - 30 b. Reasonable care to be taken to avoid unnecessary injury by fully considering all
31 alternatives.

- 1 c. Consideration of whether the utility or benefit accruing from the project
2 reasonably outweighs the adverse impacts resulting from the project.
- 3 d. Consideration of an economic analysis as defined in section 61-02-02.
- 4 e. Public input including, for drainage projects, solicitation of public input by
5 providing notice and hearing opportunities for all landowners within ten miles
6 downstream of any proposed drain outlet.
- 7 6. ~~Require that~~When a project will cause an adverse impact to lands of other
8 landowners, require appropriate easements be obtained in accordance with applicable
9 state and federal law ~~when projects will cause an adverse impact to lands of other~~
10 ~~landowners~~before contractors are secured to perform work on the project.
- 11 7. Unless otherwise specified, publish notices in the official newspaper of the relevant
12 county when publication is required by law.
- 13 8. If the water resource district submits annual reports to the state auditor under
14 subsection 3 of section 54-10-14, submit separate, standalone, audited financial
15 statements at least once every two years to the state auditor. This requirement applies
16 regardless of whether the water resource district meets the requirements to be audited
17 as a component unit of a county or other political subdivision.

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

20 **61-16.1-15. Financing project through revenue bonds, general taxes, or special**
21 **assessments - Apportionment of benefits.**

- 22 1. A water resource board ~~shall have the authority~~, either upon request or by its own
23 motion, ~~to~~may acquire needed interest in property and provide for the cost of
24 construction, alteration, repair, operation, and maintenance of a project through
25 issuance of ~~improvement~~ warrants or with funds raised by special assessments,
26 general tax levy, issuance of revenue bonds, or by a combination of general ad
27 valorem tax, special assessments, and revenue bonds. ~~Whenever~~
- 28 2. A request to the board for an assessment drain must be in the form of a written petition
29 identifying the starting point, terminus, and general course of the drain. An assessment
30 drain may include more than one watercourse or artificial channel constructed for
31 drainage when the watercourses or channels drain land within a practical drainage

1 area. The petition must be signed by no less than six landowners that own land to be
2 drained by the proposed drain, or a majority of landowners that own land to be drained
3 by the proposed drain if the majority is fewer than six. If among the leading purposes
4 of the proposed drain are benefits to the health, convenience, or welfare of the
5 residents of any city, the petition must be signed by a sufficient number of the property
6 owners of the city to satisfy the board there is a public demand for the drain. The
7 board also shall notify all owners of land that may be assessed for the project if the
8 project is approved. The board shall take reasonable steps to identify which land may
9 be assessed.

10 3. If a water resource board decides to acquire property or interests in property to
11 construct, operate, alter, repair, or maintain a project with funds raised in whole or in
12 part through special assessments, ~~such~~the assessments shall ~~must~~ be apportioned to
13 and spread upon lands or premises benefited by the project in proportion to and in
14 accordance with the benefits accruing thereto to the lands or premises. The board shall
15 assess the ~~proportion of~~ the cost of the project, or the part of the cost to be financed
16 with funds raised through levy and collection of special assessments ~~which any lot,~~
17 piece, or parcel of land shall bear, in proportion to the benefits accruing thereto and
18 any county, city, or township which is to any political subdivision and any lot, piece, or
19 parcel of land, including land in other water resource districts, benefited thereby by the
20 project. In determining assessments, the water resource board shall ~~carry out~~ensure,
21 to the maximum extent possible the water management policy of this chapter that,
22 upstream landowners ~~must~~will share with downstream landowners the responsibility to
23 provide for the proper management of surface waters.

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

26 **Bond required from requesters - Costs incurred by board.**

27 1. A water resource board may require the persons that requested an assessment
28 project under section 61-16.1-15 to file a bond with the request in a sum sufficient to
29 pay all expenses, including the cost of surveys, incurred by the board if the board
30 denies the request. However, the requesters may not be required to pay the expenses

1 if the request is approved by the board, regardless of whether the project is
2 constructed.

3 2. If the board denies a request for an assessment project, the board may bring an action
4 against the requesters or the requesters' bond for all expenses incurred in the board's
5 proceedings, and the requesters are jointly and severally liable for the expenses
6 unless the board pays the expenses out of funds available to the board.

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

9 **61-16.1-17. Financing of special improvements with special assessments - Procedure.**

10 When it is proposed to finance

11 1. If a water resource board or other person proposes a project to be financed in whole
12 or in part the construction of a project with funds raised through the collection of
13 special assessments levied against lands and premises benefited by construction and
14 maintenance of such project, the water resource board shall examine the proposed
15 project, and if in its opinion further proceedings are warranted, it and decide whether
16 the request was submitted properly and whether construction and maintenance of the
17 proposed project is necessary. If the board decides the request was submitted
18 properly and construction and maintenance of the proposed project is necessary, the
19 board shall adopt a resolution and declare that stating it is necessary to construct and
20 maintain the project. The resolution shall briefly must state the nature and purpose of
21 the proposed project and shall designate a registered engineer to assist the board in
22 preparing for the hearings and elections required under this chapter. After the adoption
23 of a resolution under this subsection, the water resource board shall ensure the
24 project, if approved by a vote of affected landowners, is completed in no more than
25 two years. If the project is not completed within the two-year period, assessments for
26 the project may not be levied until the project is complete.

27 2. For the purpose of making examinations or surveys for the proposed project, the
28 board or its employees, after written notice to each landowner, may enter upon any
29 land on which the proposed project is located or any other lands necessary to gain
30 access. The engineer shall prepare a report consisting of profiles, plans, and
31 specifications of the proposed project and estimates of the total cost thereof. The

1 estimate of costs prepared by the engineer shall ~~must~~ include ~~acquisition of right~~ the
2 cost of acquiring rights of way and shall be in sufficient detail ~~to allow~~ for the board to
3 determine the probable share of the total costs ~~that will~~ to be assessed against each of
4 the affected landowners in the proposed project assessment district.

5 3. For a proposed assessment drain, the engineer's report must include a map of the
6 lands to be drained showing the regular subdivisions of the land, and the map must be
7 filed for public inspection in the office of the county auditor for each county in which
8 lands are to be drained. The board may set the location of the proposed assessment
9 drain on lines differing from the lines in the request. If the length of the drain in the
10 request does not provide sufficient fall to drain the land to be drained, the board may
11 extend the drain below the outlet identified in the request.

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

14 **61-16.1-18. Hearing ~~Special assessments hearing~~ - Notice - Contents.**

15 1. Upon the filing of the engineer's report ~~provided for in~~ under section 61-16.1-17, and
16 after satisfying the requirements of section 61-16.1-21, the water resource board shall
17 fix a date and place for public hearing on the proposed project. ~~The date set for the~~
18 hearing must be not less than twenty days after the mailing of the notice required
19 under this section. The place of hearing must be in the vicinity of the proposed project
20 and must be convenient and accessible for the majority of the affected landowners
21 subject to assessment for the project or whose property is subject to condemnation for
22 the proposed project.

23 2. The board shall cause a complete list of the benefits and assessments to be made,
24 setting forth ~~each county, township, or city assessed in its corporate capacity as well~~
25 as each political subdivision and each lot, piece, or parcel of land to be assessed; ~~the~~
26 amount each is to be benefited by the ~~improvement~~ project; and the amount to be
27 assessed against each. A lot, piece, or parcel of land in another water resource district
28 which will receive benefits from the project must be included in the list. At least ten
29 days before the hearing, the board shall file with the county auditor of each county ~~or~~
30 counties in which the project is or will be located the list showing the percentage
31 assessment to be assessed against each parcel of land benefited by the ~~proposed~~

1 project and the approximate assessment in terms of money to be apportioned
2 ~~theretoto the parcel~~. Notice of the filing must be included in the notice of hearing.

3 3. Notices of the hearing must contain a copy of the resolution of the board ~~as well as~~ and
4 the time and place where the board will conduct the hearing. The notice of hearing
5 must specify the general nature of the project as finally determined by the engineer
6 and the board. The notice of hearing also must ~~also~~ specify when and where votes
7 concerning the proposed project may be filed. The board shall cause the notice of
8 hearing to be published once a week for two consecutive weeks in the newspaper or
9 newspapers of general circulation in the area in which the affected landowners reside
10 and in the official county newspaper of each county in which the benefited lands are
11 located.

12 4. The assessment list showing the percentage assessment against each parcel of land
13 benefited by the proposed project ~~and~~, the approximate assessment in terms of
14 money to be apportioned ~~theretoto the parcel~~, ~~along with~~ a copy of the notice of the
15 hearing, and a ballot form must be mailed to each affected landowner at the
16 landowner's address as shown by the tax rolls of the county ~~or counties~~ in which the
17 affected property is located. The board may send the assessment list and notice by
18 regular mail attested by an affidavit of mailing signed by the attorney or secretary of
19 the board. ~~The board shall cause the notice of hearing to be published once a week~~
20 ~~for two consecutive weeks in the newspaper or newspapers of general circulation in~~
21 ~~the area in which the affected landowners reside and in the official county newspaper~~
22 ~~of each county in which the benefited lands are located. The date set for the hearing~~
23 ~~must not be less than twenty days after the mailing of the notice.~~

24 5. A record of the hearing must be made by the board, ~~including~~ include a list of affected
25 landowners present in person or by agent, and ~~the record must be preserved in the~~
26 ~~minutes of the meeting. Affected landowners, and the governing body of any county,~~
27 ~~township, or city political subdivision to be assessed, may express opinions and offer~~
28 evidence regarding the proposed project and must be informed at the hearing of the
29 probable total cost of the project ~~and their individual, the person's share of the cost,~~
30 and the portion of ~~their~~ the person's property, if any, to be condemned for the project.

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

3 **61-16.1-19. Voting on proposed assessment projects.**

4 At the hearing, ~~the affected landowners, and any county, township, or city~~political
5 subdivision to be assessed, must ~~also~~ be informed when and where votes concerning the
6 proposed project may be filed. Affected landowners, and the governing body of any ~~county,~~
7 ~~township, or city~~political subdivision to be assessed, have thirty days after the date of the
8 hearing to file their votes with the secretary of the water resource board concerning the project.
9 Once the deadline for filing votes has been reached, no more votes may be filed ~~and no person~~
10 ~~may withdraw a vote or withdrawn.~~ A vote that is not filed by the deadline may not be counted as
11 being in favor of or opposed to the project or included in the number of votes filed. Any
12 withdrawal of a vote concerning the proposed project before ~~that time~~the deadline must be in
13 writing. When the votes have been filed and the deadline for filing votes has passed, the board
14 immediately shall open the ballots, count the votes, and immediately determine whether the
15 project is approved. If the board finds ~~that~~ fifty percent or more of the total votes filed are
16 against the proposed project, ~~then~~ the vote constitutes a bar against proceeding further with the
17 project. If the board finds ~~that~~ the number of votes filed against the proposed project is less than
18 fifty percent of the votes filed, the board shall issue an order establishing the proposed project
19 and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22,
20 to contract or provide for the construction or maintenance of the project in substantially the
21 manner and according to the forms and procedure provided in title 40 for the construction of
22 sewers within municipalities. The board may enter into an agreement with any federal or state
23 agency under the terms of which the contract for the project is to be let by the federal agency,
24 the state agency, or a combination ~~thereof~~of federal and state agencies. In projects in which
25 there is an agreement ~~that~~ a party other than the board will let the contract, the board may
26 dispense with all of the requirements of title 40. Upon making an order establishing or denying
27 establishment of a project, the board shall publish notice of the order in ~~a newspaper of general~~
28 ~~circulation in the area in which the affected landowners reside and in~~ the official county
29 newspaper of each county in which the ~~benefited~~affected lands are located. The notice also
30 must advise affected landowners of the right to appeal the order. Any right of appeal begins to

1 run on the date of publication of the notice. ~~As used in this section, "board" means water-~~
2 ~~resource board.~~

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

5 **Ballot forms - Procedures for opening cast ballots.**

6 In any election conducted by a water resource board under this chapter, the water resource
7 board:

- 8 1. Shall provide ballots in a form that prevents disclosure of the votes cast on the ballots
9 until the ballots are opened for counting.
10 2. Shall provide notice of the deadline by which ballots must be cast.
11 3. May not open any cast ballots until the deadline by which ballots must be cast has
12 passed.

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

15 **61-16.1-20. Assessments - Voting right or powers of landowners.**

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

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

1 **61-16.1-21. Assessment of cost of project.**

2 Whenever the

3 1. ~~If a~~ water resource board proposes to make any special assessment under the
4 provisions of this chapter, the board, ~~prior to~~before the hearing required under section
5 61-16.1-18, shall inspect ~~any and~~ all lots and parcels of land, which may be subject to
6 assessment ~~and~~. The board shall determine from the inspection the particular lots and
7 parcels of lands which, in the opinion of the board, will be ~~especially~~ benefited
8 especially by the construction of the work for which the assessment is made ~~and shall~~
9 determine the value, in dollars, of the benefit to each of the lots and parcels. The
10 board shall assess the ~~proportion of~~ the total cost of acquiring ~~right~~rights of way and
11 constructing and maintaining such improvement ~~in accordance with the project in~~
12 proportion to, but not exceeding, the benefits received ~~but not exceeding such~~
13 ~~benefits~~from the construction for which the assessment will be made, against:

14 4. a. Any ~~county, township, or city~~political subdivision, in its corporate capacity, which
15 may be benefited directly or indirectly ~~thereby~~.

16 2. b. Any lot, piece, or parcel of land, other than a right of way, which is benefited
17 ~~directly benefited by such~~ improvement.

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

1 ~~subdivision~~ in accordance with law. ~~No tax limitation provided by any~~Tax limitations
2 under a statute of this state shall do not apply to tax levies made by any such political
3 subdivision for the purpose of paying any special assessments made ~~in accordance~~
4 ~~with the provisions of~~under this chapter. ~~There shall be attached~~A water resource
5 board shall attach to the list of assessments a certificate signed by a majority of the
6 members of the board certifying ~~that the same~~the list of assessments is a true and
7 correct assessment of the benefit ~~therein~~ described to the best of ~~their~~the board
8 members' judgment and ~~stating the several~~identifying the items of expense included in
9 the assessment.

10 3. Land that has been assessed or is being assessed for an assessment drain may not
11 be assessed for a new drain unless the water resource board demonstrates the land
12 will benefit from the construction of the new drain.

13 4. Notwithstanding subsections 1, 2, and 3, land that is higher than the land being
14 drained by an assessment drain may not be assessed for the cost of constructing or
15 maintaining the drain unless the higher land was changed artificially to increase the
16 amount of water flowing away from the land.

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

19 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
20 **assessments - Confirmation of assessment list - Filing.**

21 After entering an order establishing ~~the project~~an assessment project or assessment drain,
22 the water resource board shall cause the assessment list to be published once each week for
23 three successive weeks in the newspaper ~~or newspapers~~ of general circulation in the district
24 and in the official county newspaper of each county in which the benefited lands are located
25 together with a notice of the time when, and place where, the board will meet to hear objections
26 to any assessment by any interested party, or an agent or attorney for ~~that~~an interested party.
27 The board also shall mail a copy of the notice of the hearing in an envelope clearly marked
28 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by
29 the tax rolls of the county ~~or counties~~ in which the affected property is located. The date set for
30 the hearing may not be less than thirty days after the mailing of the notice. At the hearing, the
31 board may ~~make such alterations in~~alter the assessments ~~as in its opinion may be~~the board

1 ~~deems~~ just and necessary to correct any error in the assessment ~~but must.~~ The board shall
2 make the aggregate of all assessments equal to the total amount required to pay the entire cost
3 of the work for which the assessments are made, or the part of the cost to be paid by special
4 assessment. An assessment may not exceed the benefit as determined by the board to the
5 parcel of land or political subdivision assessed. The board shall ~~then~~ confirm the assessment
6 list ~~and thereafter the hearing.~~ The secretary shall attach to the list a certificate ~~that~~ stating the
7 ~~same assessment list~~ is correct as confirmed by the board and shall file the list in the office of
8 the secretary. If the assessments are for an assessment drain, the list must be filed with the
9 board's permanent records of the drain and recorded by the county auditor in a book of
10 drainage assessments.

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

13 **61-16.1-23. Assessments - Appeal to state ~~engineer~~ water commission appeal panel.**

14 ~~After~~ Within thirty days after the hearing ~~provided for in~~ under section 61-16.1-22, affected
15 landowners ~~and~~ or any political subdivision subject to assessment, having not less than twenty
16 percent of the possible votes, as determined by section 61-16.1-20, ~~who believe that~~ which
17 believes the assessment ~~had not been~~ was not fairly or equitably made, or that the project is not
18 properly located or designed, may appeal to the state ~~engineer~~ water commission appeal panel
19 by petition, ~~within ten days after the hearing on assessments,~~ to make a review of the
20 assessments and to examine the location and design of the proposed project. Upon receipt of
21 ~~such~~ the petition, the state ~~engineer~~ water commission appeal panel shall examine the lands
22 assessed and the location and design of the proposed project, ~~and if it appears that.~~ If the ~~state~~
23 engineer appeal panel believes the assessments ~~have not been~~ were not made equitably, the
24 ~~state engineer~~ appeal panel may ~~proceed to~~ correct and adjust the ~~same~~ assessments, and the
25 ~~state engineer's~~ appeal panel's correction and adjustment of said assessment is final. ~~Should it~~
26 ~~appear that, in the judgment of~~ if the ~~state engineer~~ appeal panel, believes the project has been
27 ~~improperly~~ was located or designed ~~improperly,~~ the ~~state engineer~~ appeal panel may order a
28 relocation and redesign. ~~Such relocation and redesign that~~ must be followed in the construction
29 of the proposed project. Upon filing a bond for two hundred fifty dollars with the board ~~for the~~
30 ~~payment of~~ to pay the costs of the state ~~engineer~~ water commission in the matter, any landowner
31 or political subdivision ~~who or which~~ that claims ~~that~~ the landowner or political subdivision will

1 receive no benefit at all from the construction of a new project may appeal to the state
2 ~~engineer~~water commission appeal panel, within ~~ten~~thirty days after the hearing on
3 assessments, the question of whether there is any benefit. The ~~state engineer~~appeal panel may
4 not determine the specific amount of benefit upon an appeal by an individual landowner or
5 political subdivision; but shall ~~only~~ determine ~~if~~whether there is any benefit to the landowner or
6 political subdivision, and the determination of the ~~state engineer~~appeal panel ~~upon such~~
7 ~~question~~ is final.

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

10 **61-16.1-24. When assessments may be made.**

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

24 ~~In no event shall any contract or contracts be awarded which~~ Contracts that exceed, by
25 twenty percent or more, the estimated cost of the project as presented to and approved by the
26 affected landowners may not be awarded.

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

29 **61-16.1-26. Reassessment of benefits.**

30 The water resource board may hold at any time or, upon petition of any affected landowner
31 or political subdivision ~~which has been~~ assessed after a project has been in existence for at

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

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

18 **61-16.1-27. Correction of errors and mistakes in special assessments - Requirements**
19 **governing.**

20 If mathematical errors or other ~~such~~ mistakes occur in making any assessment resulting in
21 a deficiency in that assessment, the water resource board shall cause additional assessments
22 to be made in a manner substantially complying with chapter 40-26 as it relates to special
23 assessments.

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

26 **61-16.1-28. Certification of assessments to county auditor.**

27 When a water resource board, by resolution, has caused special assessments to be levied
28 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
29 special assessments ~~shall~~will bear, ~~which~~and the rate ~~shall~~may not exceed one and one-half
30 percent above the warrant rate. Interest on unpaid special assessments ~~shall~~must commence
31 on the date the assessments are ~~finally~~ confirmed by the board. Special assessments may be

1 certified and made payable in equal annual installments, the last of which shallmust be due and
2 payable not more than thirty years after the date of the warrants to be paid. The secretary of the
3 district shall certify to the county auditor of the county in which the district is situated, or if the
4 district ~~embraces~~or affected lands are situated in more than one county, to the county auditor of
5 each county in which ~~district~~ lands subject to ~~such~~the special assessments are situated, the
6 total amount assessed against ~~such~~ lands in that county and the proportion or percentage of
7 ~~such~~the amount assessed against each piece, parcel, lot, or tract of land. The secretary of the
8 district shall ~~also~~ file with the county auditor of each county in which ~~district~~ lands subject to
9 assessment lie a statement showing the cost of the project, the part ~~thereof~~of the project, if any,
10 ~~which will~~to be paid out of the general taxes, and the part to be financed by special
11 assessments; and documentation necessary for the auditor to make an independent
12 determination the assessments to be levied do not exceed the total cost of the project. Funds
13 needed to pay the cost of maintaining a project may be raised in the same manner as funds
14 were raised to meet construction costs. If the project was financed in whole or in part through
15 the use of special assessments, the water resource board shall prorate the costs of maintaining
16 ~~projects~~the project in the same proportion as ~~were~~ the original costs of construction, or, ~~in the~~
17 ~~event~~if a reassessment of benefits has been adopted, the costs shallmust be prorated in
18 accordance with the reassessment of benefits as ~~authorized by section 61-16.1-54~~.

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

21 **61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to**
22 **district.**

23 The county auditor of each county shall extend the special assessments certified to, and
24 verified by, the county auditor on the tax list of the district for the current year and ~~such~~the
25 assessments, with interest and penalties, if any, shallmust be collected by the county treasurer
26 as general taxes are collected and shall ~~be~~ paid to the treasurer of the district.

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

29 **61-16.1-30. Lien of special assessment.**

30 A special assessment imposed by a district, ~~together~~ with interest and penalties ~~which~~that
31 accrue ~~thereon~~on the assessment, shall ~~become~~are a lien upon the property on which the

1 assessment is levied from the time the assessment list is approved by the water resource board
2 until the assessment is fully paid. ~~Such~~The liens shall have precedence over all other liens
3 except general tax liens and ~~shall~~may not be divested by any judicial sale. ~~No~~A mistake in the
4 description of the property covered by the special assessment lien or in the name of the owner
5 of ~~such~~the property ~~shall~~does not defeat the lien if the assessed property can be identified by
6 the description in the assessment list. This chapter ~~shall be considered~~is deemed notice to all
7 subsequent encumbrancers of the priority of special assessments imposed under this chapter.

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

10 **61-16.1-31. Foreclosure of tax lien on property when general and special assessment**
11 **taxes are delinquent.**

12 Special assessments imposed under this chapter shall become due and delinquent, and
13 shall be subject to penalties and nonpayment at the same date and rates as first installments of
14 real estate taxes at the same time and in the same manner as provided in title 57.

15 If there is no delinquent general property tax against a tract or parcel of land and ~~if the tract~~
16 or parcel is foreclosed for special assessments alone, the notice of foreclosure of tax lien
17 ~~shall~~must state that the foreclosure is for special assessments, and a tax deed ~~in such case~~
18 ~~shall~~must be issued in the usual course of procedure.

19 **SECTION 31. AMENDMENT.** Section 61-16.1-32 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void**
22 **- Exceptions.**

23 1. The collection of any tax or assessment levied or ordered to be levied to pay for the
24 location and construction of any project under ~~the provisions of this chapter shall~~may
25 not be enjoined perpetually or absolutely declared void by reason of any of the
26 following:

27 1. a. Any error of any officer or board in the location and establishment ~~thereof~~of the
28 project.

29 2. b. Any error or informality appearing in the record of the proceedings by which any
30 project was established.

31 3. c. A lack of any proper conveyance or condemnation of the right of way.

1 2. The court in which any proceeding is brought to reverse or declare void the
2 proceedings by which any project has been established, or to enjoin the tax levied to
3 pay ~~therefor for the project~~, on application of either party, shall order an examination or
4 survey of the premises, or survey of the same, or both, as may be deemed necessary.
5 The court, on a final hearing, shall enter ~~ana just and equitable order which is just and~~
6 equitable, and may order the tax or any part ~~thereof of the tax~~ to remain on the tax lists
7 for collection, or, if the tax were paid under protest, may order, ~~if justice requires,~~ the
8 whole or any part ~~thereof of the tax~~ to be refunded. The costs of ~~such the~~ proceedings
9 ~~shall~~must be apportioned among the parties as ~~justice may require~~the court deems
10 appropriate.

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

13 **County may pay share of drainage taxes on tax deed lands.**

14 If lands acquired by the county by tax deed are assessed drainage taxes, the county
15 commissioners shall pay the taxes from general funds if, based on a due appraisal, the value of
16 the land exceeds the total of the delinquent taxes for which foreclosure proceedings were
17 instituted plus the total drainage tax assessment. If the total taxes assessed at foreclosure plus
18 drainage taxes exceed the value of the land, the county may not pay the drainage
19 assessments. However, upon the sale of the land, any excess of the sales price over the
20 amount of taxes for which the foreclosure proceedings were instituted must be paid to the
21 drainage district to the extent of the drainage taxes due. Any income from the property must be
22 first credited to the general taxes, and any surplus income must be paid to the drainage district
23 to the extent of the drainage taxes due.

24 **SECTION 33. AMENDMENT.** Section 61-16.1-33 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 ~~**61-16.1-33. Water resource board may apportion assessments for benefits of a**~~
27 ~~**project**~~**Apportioning assessments against a county or city or any tract of land benefited.**

28 Whenever

29 1. ~~If a water resource board discovers or ascertains that the county, a township, or city~~
30 ~~therein, or that a~~ political subdivision; or any tract, parcel, or piece of land is being
31 benefited by a project and that the county or such township, municipality the political

1 subdivision, tract, piece, or parcel of land was not included in the project area
2 assessed for the cost of construction and maintenance of the project when
3 established, the board shall commence proceedings for reassessment of lands
4 originally assessed for the cost of establishing and constructing such project and shall
5 apportion and assess the part of the balance remaining unpaid, if any, of the cost of
6 ~~such~~the project, and the expense of maintenance, ~~which such county, township, or city~~
7 the political subdivision and each tract of land found to be benefited ~~thereby~~by the
8 project should bear.

9 2. ~~Before making such reassessment or reapportionment of~~reassessing and
10 reapportioning benefits under this section, the board shall hold a hearing ~~for the~~
11 ~~purpose of determining~~to determine the benefits of the project to the county, ~~such~~
12 ~~township, or city~~political subdivision and to each tract, piece, or parcel of land being
13 benefited. At least ten days' notice of the hearing shall be given by publication in the
14 newspaper ~~or newspapers~~ having general circulation in the county, and by mailing
15 notice ~~thereof~~of the hearing to each owner of land assessed for the cost of
16 construction and maintenance when the project was established, ~~and by mailing such~~
17 ~~notice~~; to the governing body of the county, ~~township, municipality,~~political subdivision
18 found to be benefited since the establishment of the project; and to the owner, as
19 determined by the records in the office of the recorder or county treasurer of each
20 tract, piece, or parcel of land found to be benefited since the establishment of the
21 project. The provisions of this chapter governing the original determination of benefits
22 and assessment of costs shall apply to the reassessment and assessment of benefits
23 ~~carried out under the provisions of~~under this section.

24 **SECTION 34. AMENDMENT.** Section 61-16.1-34 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons.**

27 ~~A district may, at any~~Any time after entering into a contract for a project to be financed in
28 whole or in part by special assessments, a water resource district may issue temporary and
29 definitive warrants on the project fund, created for that purpose, ~~in the manner and subject to~~
30 ~~the limitations prescribed in~~ accordance with section 40-24-19. If the warrants are issued to
31 finance a sewer or water project, the net revenues derived from the imposition of service

1 charges to be imposed and collected ~~with respect thereto as provided in~~ accordance with
2 section 40-22-16 may be pledged to payment of ~~these~~ the warrants, except that the first maturity
3 date of any ~~such warrant shall~~ of the warrants may not be less than two years from the date of
4 issuance. Warrants issued under this section ~~shall~~ must be in such amounts as ~~in the judgment~~
5 ~~of the water resource board will be~~ determines necessary for the project. The warrants ~~shall~~ must
6 bear interest at a rate ~~or rates~~, and be sold at a price, resulting in an average net interest cost
7 not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling
8 on warrant issues sold at public sale or to the state of North Dakota or any of ~~its~~ the state's
9 agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the
10 case may be, may be attached to the warrants. The warrants ~~shall~~ must state upon ~~their~~ the
11 warrants' face the purpose for which ~~they~~ the warrants are issued and the project fund from
12 which ~~they~~ the warrants are payable and ~~shall~~. The warrants also must be signed by the
13 chairman of the water resource board and countersigned by the secretary of the water resource
14 district. The warrants ~~shall~~ must be payable serially in such amounts as the board determines,
15 extending over a period of not more than thirty years.

16 **SECTION 35. AMENDMENT.** Section 61-16.1-39.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-16.1-39.2. Maintenance of project - Exception.**

19 If, upon receipt of a petition meeting the requirements of section 61-16.1-39.1, or upon ~~the~~ a
20 water resource board's own motion, the board determines a project established under the
21 provisions of this chapter requires maintenance, the board may provide the required
22 maintenance by using the same method used initially to finance the project. Unless otherwise
23 provided by law or agreement, the participation of the state in financing the initial project does
24 not bind the state to finance any maintenance. Any maintenance financed through special
25 assessments may not exceed the maximum levy established by section 61-16.1-45. This
26 section does not apply to maintenance of assessment drains.

27 **SECTION 36. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is
28 amended and reenacted as follows:

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

30 Drains may be laid along, within the limits of, or across any public road or highway, but not
31 to the injury of ~~such~~ the road. ~~In instances where it is necessary to run a drain across a~~

1 highway, ~~if a water resource board notifies~~ the department of transportation, the board of county
2 commissioners, or the board of township supervisors, ~~as the case may be, when notified by the~~
3 ~~water resource board to do so, it is necessary to run a drain across a highway, the department~~
4 ~~or board shall make and pay for~~ necessary openings through the road or highway at its own
5 expense, and shall build and keep in repair ~~maintain~~ all required culverts or bridges as provided
6 under section 61-16.1-43. ~~In instances where~~ drains are laid along or within the rights of way
7 of roads or highways, the drains shall ~~shall~~ must be maintained and kept open by and at the expense
8 of the water resource district concerned. A drain may be laid along any railroad when necessary,
9 but not to the injury of the railroad, ~~and when it is necessary to run a drain across the.~~ When
10 notified by a water resource board that a drain must cross a railroad, the railroad company,
11 ~~when notified by the water resource board to do so,~~ shall make the necessary opening through
12 ~~such~~ the railroad, shall build the required bridges and culverts, and shall keep ~~them~~ the
13 openings, bridges, and culverts in repair.

14 **SECTION 37. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-16.1-43. Construction of bridges and culverts in connection with a drain - Costs.**

17 The

- 18 1. A water resource board shall construct ~~such~~ bridges or culverts over or in connection
19 with a drain as ~~in its judgment may be~~ the board deems necessary to furnish passage
20 from one part to another of any private farm or tract of land intersected by ~~such~~ the
21 drain. The cost of ~~such construction shall~~ constructing the bridge or culvert must be
22 charged as part of the cost of constructing the drain, ~~and any such.~~ The bridge, or
23 culvert, or passageway shall must be maintained under the authority of the water
24 resource board, and the ~~necessary expense shall be deemed a~~ cost of maintaining the
25 bridge or culvert is part of the cost of ~~maintenance~~ maintaining the drain.
- 26 2. Whenever any bridge or culvert is to be constructed on a county or township highway
27 system over and across or in connection with a drain, the cost of constructing ~~such~~ the
28 bridge or culvert shall ~~shall~~ must be shared in the following manner:
 - 29 4. a. The state water commission may, ~~if funds are available,~~ participate in accordance
30 with such rules and regulations as it may prescribe provide funding according to
31 the commission's rules and policies. The remaining cost shall be borne forty

1 percent by the county and sixty percent by the district which has created the
2 need for such construction.

3 2. b. If, however, moneys have not been made available to the commission for
4 participation in accordance with subsection 1, then forty percent of the cost of a
5 bridge or culvert shall be paid by the county and sixty percent shall be charged
6 as the cost of the drain to the district.

7 3. c. Where such bridges or culverts are constructed with federal financial
8 participation, the costs exceeding the amount of the federal participation shall be
9 borne by the district and county according to the provisions of this section, as the
10 case may be.

11 **SECTION 38. AMENDMENT.** Section 61-16.1-45 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-16.1-45. Maintenance of ~~drainage projects~~assessment drains.**

14 1. ~~If it is desired to provide for maintenance of an assessment drain in whole or in part by~~
15 ~~means of special assessments, the~~A water resource district may provide for
16 maintenance of an assessment drain through a special assessment. The levy in any
17 year for the maintenance may not exceed four dollars per acre [.40 hectare] on any
18 agricultural lands benefited by the drain. The district, ~~at its own discretion,~~ may
19 utilize either of the following methods for levying special assessments for the
20 maintenance:

21 a. Agricultural lands that carried the highest assessment when the drain was
22 originally established, or received the most benefits under a reassessment of
23 benefits, may be assessed the maximum amount of four dollars per acre
24 [.40 hectare]. The assessment of other agricultural lands in the district must be
25 based upon the proportion that the assessment of benefits at the time of
26 construction or at the time of any reassessment of benefits bears to the
27 assessment of the benefits of the agricultural land assessed the full four dollars
28 per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any
29 one year as the ratio of the benefits under the original assessments or any
30 reassessment bears to the assessment of agricultural lands bearing the highest
31 assessment.

- 1 b. Agricultural lands must be assessed uniformly throughout the entire assessed
2 area. Nonagricultural property must be assessed an amount not to exceed two
3 dollars for each five hundred dollars of taxable valuation of the nonagricultural
4 property.
- 5 2. In case the maximum levy or assessment on agricultural and nonagricultural property
6 for any year will not produce an amount sufficient to cover the cost of ~~cleaning out and~~
7 ~~repairing~~maintaining the drain, a water resource board may accumulate a fund in an
8 amount not exceeding the sum produced by the maximum permissible levy for six
9 years. Annually, a water resource board shall provide sufficient documentation to the
10 board of county commissioners for each county in which assessed land is situated for
11 the county commissioners to verify the accumulated maintenance fund does not
12 exceed the limit in this subsection. A water resource board may not provide for
13 maintenance of an assessment drain using the funds accumulated from six years of
14 levied assessments unless the board provides the county commissioners of each
15 county in which assessed lands are situated documentation demonstrating the need
16 for the maintenance project to the satisfaction of the county commissioners.
- 17 3. If the cost of, or obligation for, the ~~cleaning and repairing~~maintenance of ~~any~~a drain
18 exceeds the total amount that may be levied by the board in any six-year period, the
19 board ~~shall obtain~~may not obligate the district for the maintenance costs unless the
20 board receives the approval of the majority of the landowners as determined by
21 ~~chapter 61-16.1~~section 61-16.1-20 before obligating the district for the costs. A board
22 may not divide necessary maintenance into multiple projects or phases to avoid the
23 approval requirements in this subsection.
- 24 4. Funds raised through a maintenance levy under this section may be used only for
25 maintenance.

26 **SECTION 39. AMENDMENT.** Section 61-16.1-46 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-46. Establishing new drains in location of invalid or abandoned drain.**

29 If any of the proceedings for the location, establishment, or construction of ~~any drain under~~
30 ~~the provisions of this chapter shall have an~~ assessment drain has been enjoined, vacated, set
31 aside, declared void, or voluntarily abandoned by the water resource board, for any reason

1 ~~whatsoever~~, the board may proceed under the provisions of sections 61-16.1-17 through
2 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as
3 the abandoned or invalid drain. For the purposes of this chapter, a drain that is not ~~properly~~
4 maintained ~~shall be properly~~ is considered abandoned. When a new drain is established at
5 substantially the same location, the board shall ascertain the real value of services rendered,
6 moneys expended, and work done under the invalid or abandoned proceedings, and the extent
7 to which the ~~same~~ services, moneys, and work contributes to the construction and completion of
8 the new drain. The board ~~then~~ shall ~~then~~ issue warrants in an amount not exceeding the value
9 to the new drain of the work completed on the invalid or abandoned drain and shall deliver
10 ~~such~~ the new warrants, pro rata, to the owners or holders of old warrants or bonds issued under
11 the invalid or abandoned drainage proceedings, upon the surrender of ~~such~~ the old warrants or
12 bonds by the ~~holder or~~ warrant or bond holders thereof.

13 **SECTION 40. AMENDMENT.** Section 61-16.1-47 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-47. Drain kept open and in repair by water resource board.**

16 ~~All assessment drains that have been constructed in any district~~ A water resource district
17 has authority over all assessment drains, except township drains, ~~shall be under the charge of~~
18 ~~the water resource board and it shall be the duty of~~ constructed in the district, and the water
19 resource board ~~to~~ shall keep ~~these~~ the drains open and in good repair. ~~It shall be the mandatory~~
20 ~~duty of the board, within~~ Within the limits of available funds, ~~to~~ the board shall clean out and
21 repair any assessment drain when requested to do so by petition of the affected landowners
22 having fifty percent or more of the possible votes, as determined ~~according to~~ under section
23 61-16.1-20.

24 **SECTION 41. AMENDMENT.** Section 61-16.1-48 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-16.1-48. Assessment of costs of cleaning and repairing drains.**

27 The cost of cleaning out and repairing an assessment drain or a drainage structure
28 constructed by any governmental entity for which no continuing funds for maintenance are
29 available or which does not meet the definition of maintenance must be assessed pro rata
30 against the lands benefited in the same proportion as the original assessment of the costs in
31 establishing ~~such~~ the drain, or in accordance with any reassessment of benefits if ~~there has~~

1 ~~been a reassessment of benefits under the provisions of section 61-16.1-26~~made. If no
2 assessment for construction costs or reassessment of benefits has been made, the water
3 resource board shall make assessments for the cost of the cleaning and repairing such ~~drain or~~
4 ~~drainage structure constructed by any governmental entity for which no continuing funds for~~
5 ~~maintenance are available~~ in accordance with the provisions of this chapter for the
6 establishment of a new project. The governing body of any incorporated city, by agreement with
7 the board, ~~is authorized to~~may contribute to the cost of cleaning out, repairing, and maintaining
8 a drain in excess of the amount assessed under this section, and ~~such~~the excess contribution
9 may be expended ~~for such purposes~~ by the board for cleaning out, repairing, and maintaining
10 the drain.

11 **SECTION 42.** A new section to chapter 61-16.1 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Dissolution of drainage district - Abandonment of drain - Return of unexpended**
14 **assessments.**

15 The owners of property subject to at least fifty-one percent of the cost of maintaining the
16 drain, as determined under section 61-16.1-20, may petition the board for the abandonment and
17 dissolution of the drain. Upon receipt of the petition, the board shall call a public hearing on the
18 petition. If the board finds the number of valid signatures on the petition is sufficient, and the
19 drainage district has no outstanding indebtedness, the board shall declare the drain to be
20 abandoned and the drainage district to be dissolved. The board also shall record the declaration
21 in the board's minutes, publish the declaration in a newspaper having wide circulation in the
22 county in which the drain is located, and return all unexpended assessments collected for the
23 maintenance of the drain to the owner of the assessed property on a pro rata basis in proportion
24 with the amount originally assessed. If the drainage district extends into two or more water
25 resource districts, the water resource boards shall convene in joint session to satisfy the
26 requirements of this section. An abandoned drain may be re-established in whole or in part in
27 the same manner as a new drain may be established.

28 **SECTION 43.** A new section to chapter 61-16.1 of the North Dakota Century Code is
29 created and enacted as follows:

1 **Consolidation of drainage district into water resource district.**

- 2 1. Upon resolution of a board of county commissioners or water resource board, or upon
3 the filing with a board of county commissioners of a petition containing the signatures
4 of landowners possessing at least fifteen percent of the voting rights in one or more
5 drainage districts as determined under section 61-16.1-20, the board of county
6 commissioners shall set a date for a hearing on the establishment or expansion of a
7 water resource district to include the property contained within the drainage districts.
8 The board shall publish notice of the time, place, and purpose of the hearing once
9 each week for two consecutive weeks in a newspaper of general circulation in the
10 county. The second publication must be not less than ten days and not more than
11 twenty days before the date set for the hearing. If special assessments remain
12 outstanding on any property within a drainage district to be affected by the hearing, the
13 board shall notify all landowners of record subject to the special assessments by
14 ordinary mail at least ten days before the date set for the hearing. If a majority of
15 affected landowners, as determined under section 61-16.1-20, file written objections to
16 the establishment or expansion of the water resource district at the hearing, the
17 proceedings must be discontinued. Otherwise, the board shall file with the state water
18 commission a petition signed by a majority of the board for the establishment or
19 expansion of the water resource district, and the subsequent proceedings must
20 comply with this chapter and chapter 61-16.
21 2. If the requested water resource district is established or expanded, the board shall
22 dissolve the drainage districts by resolution and transfer all property, including funds,
23 of the dissolved districts to the water resource district. The funds may be expended
24 separately or jointly with other funds on projects or activities of the water resource
25 district which are of specific benefit to property within the dissolved drainage districts,
26 or the funds may be prorated among the properties within the dissolved drainage
27 districts and credited to the properties in proportion with the amount originally
28 assessed as a credit against subsequent assessments by the water resource district.
29 3. Notwithstanding subsection 2, a drainage district may not be dissolved if it has any
30 outstanding warrants, bonds, or other obligations unless the order of the board
31 dissolving the district provides for a continuance of assessments on properties within

1 the dissolved district to pay outstanding obligations or an assumption of the obligations
2 by the established or expanded water resource district. If the water resource district
3 assumes the obligations, the obligations must be spread over properties within the
4 water resource district. Sinking funds created to pay the obligations must be continued
5 in force by the water resource district until the obligations are liquidated.

6 — **SECTION 43.** ~~A new section to chapter 61-16.1 of the North Dakota Century Code is~~
7 ~~created and enacted as follows:~~

8 — **Permit to drain surface waters required - Penalty.**

9 — ~~1. Before draining a pond, slough, lake, or sheetwater, or any series of ponds, sloughs,~~
10 ~~lakes, or sheetwater, with a watershed area comprising eighty acres [32.37 hectares]~~
11 ~~or more, a person shall secure a permit to do so. As used in this section, "sheetwater"~~
12 ~~means shallow water that floods land not normally subject to standing water. The~~
13 ~~permit application must be submitted to the state engineer. The state engineer shall~~
14 ~~refer the application to the water resource district, or multiple water resource districts,~~
15 ~~within which is found a majority of the watershed or drainage area of the pond, slough,~~
16 ~~lake, or sheetwater for consideration and approval. The state engineer may require~~
17 ~~applications approved by the district and proposing drainage of statewide or~~
18 ~~interdistrict significance to be subject to final approval by the state engineer.~~

19 — ~~2. A permit required under this section may not be granted until an investigation,~~
20 ~~conducted and paid for by the permit applicant, discloses the quantity of water to be~~
21 ~~drained will not flood or adversely affect downstream lands. If the investigation shows~~
22 ~~the proposed drain will flood or adversely affect lands of downstream landowners, the~~
23 ~~water resource board may not issue a permit until flowage easements are obtained.~~
24 ~~The flowage easements must be filed for record in the office of the recorder of the~~
25 ~~county in which the lands are situated.~~

26 — ~~3. This section does not apply to the construction or maintenance of an existing or~~
27 ~~prospective drain constructed under the supervision of a state or federal agency, as~~
28 ~~determined by the state engineer.~~

29 — ~~4. Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or~~
30 ~~any series of ponds, sloughs, lakes, or sheetwater, with a watershed area comprising~~
31 ~~eighty acres [32.37 hectares] or more, without first securing a permit to do so is liable~~

1 ~~for all damage sustained by any person caused by the drain, and is guilty of an~~
2 ~~infraction.~~

3 ~~5. The state engineer may adopt rules for temporary permits for emergency drainage.~~

4 **SECTION 44.** A new section to chapter 61-16.1 of the North Dakota Century Code is created
5 and enacted as follows:

6 ~~**Permit to drain subsurface waters required – Penalty.**~~

7 ~~1. Installation of a subsurface water management system requires a permit. A subsurface~~
8 ~~water management system that uses surface intakes must be permitted exclusively~~
9 ~~under this section if the system will have a drainage coefficient of three-eighths of an~~
10 ~~inch [0.95 centimeters] or less. Subsurface water management systems that use~~
11 ~~surface intakes must be permitted exclusively under section 38 of this Act if the system~~
12 ~~will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].~~

13 ~~2. a. The state engineer shall develop an application form for a permit required under~~
14 ~~this section. A person seeking to construct a subsurface water management~~
15 ~~system that requires a permit under this section must submit a completed~~
16 ~~application to the water resource district, or multiple water resource districts,~~
17 ~~within which is found a majority of the land area for consideration and approval.~~
18 ~~The water resource board may charge permit applicants a fee up to one hundred~~
19 ~~fifty dollars. Water resource boards shall forward copies of all approved permits~~
20 ~~to the state engineer.~~

21 ~~b. Upon submission of a completed application for a permit, the water resource~~
22 ~~board immediately shall give notice and a copy of the submission via certified~~
23 ~~mail to each owner of land within one mile [1.61 kilometers] downstream of the~~
24 ~~proposed subsurface water management system outlet unless the distance to the~~
25 ~~nearest waterway depicted as a perennial or intermittent stream or river on a~~
26 ~~United States geological survey topography map, assessment drain, natural~~
27 ~~watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case~~
28 ~~notice and a copy of the submission must be given immediately to each owner of~~
29 ~~land between the outlet and the nearest assessment drain, natural watercourse,~~
30 ~~slough, or lake. The notice requirement in this section must be waived if the~~

1 ~~applicant presents signed, notarized letters of approval from all downstream-~~
2 ~~landowners entitled to notice in this subsection.~~

3 ~~3. a. If the water resource board receives notarized letters of approval from all-~~
4 ~~downstream landowners entitled to notice, the board shall approve the completed-~~
5 ~~permit application as soon as practicable but no later than thirty days after receipt-~~
6 ~~of the last letter. Otherwise, the water resource board shall review the completed-~~
7 ~~application at its next meeting that is at least thirty days after receipt of the-~~
8 ~~application. The board shall consider any written, technical evidence provided by-~~
9 ~~the applicant or a landowner notified under subsection 2 addressing whether the-~~
10 ~~land of a notified landowner will be flooded or unreasonably harmed by the-~~
11 ~~proposed subsurface water management system. For purposes of this section-~~
12 ~~"technical evidence" means written information regarding the proposed-~~
13 ~~subsurface water management system, prepared after consideration of the-~~
14 ~~design and physical aspects of the proposed system, and any adverse hydraulic-~~
15 ~~effects, including erosion, flood duration, crop loss, and downstream water-~~
16 ~~control device operation impacts, which may occur to land owned by a landowner-~~
17 ~~provided under subsection 2. Technical evidence must be submitted to the permit-~~
18 ~~applicant, notified landowners, and the board within forty five days of the receipt-~~
19 ~~of the completed permit application by the board. A notified landowner may not-~~
20 ~~object to the proposed system unless the landowner presents technical evidence-~~
21 ~~under this subsection.~~

22 ~~b. If the board finds, based on technical evidence, the proposed subsurface water-~~
23 ~~management system will flood or unreasonably harm lands of a landowner-~~
24 ~~notified under subsection 2, the board may require the applicant to obtain a-~~
25 ~~notarized letter of approval before issuing a permit for the system. The board may-~~
26 ~~not require a letter of approval for any land downstream of a system that outlets-~~
27 ~~into an assessment drain, natural watercourse, or pond, slough, or lake if notified-~~
28 ~~landowners did not provide technical evidence to the district.~~

29 ~~c. A water resource district may attach reasonable conditions to an approved permit-~~
30 ~~for a subsurface water management system that outlets directly into an-~~
31 ~~assessment drain or public highway right of way. For purposes of this subsection,~~

1 ~~"reasonable conditions" means conditions that address the outlet location, proper~~
2 ~~erosion control, reseeding of disturbed areas, installation of riprap or other ditch~~
3 ~~stabilization, and conditions that require all work to be done in a neat and~~
4 ~~professional manner. Any condition to locate the project a minimum distance from~~
5 ~~rural water supply lines may not extend beyond an existing easement for lines, or~~
6 ~~no greater than twenty feet [6.1 meters] from either side of the water line if the~~
7 ~~rural water line was installed under a blanket easement.~~

8 ~~d. A water resource district may require a subsurface water management system~~
9 ~~granted a permit under this section to incorporate a control structure at the outlet~~
10 ~~into the design of the system and may require the control structure be closed~~
11 ~~during critical flood periods.~~

12 ~~e. A water resource district board may not deny a completed permit application~~
13 ~~under this section unless the board determines, based on technical evidence~~
14 ~~submitted by a landowner notified under subsection 2, the proposed water~~
15 ~~management system will flood or unreasonably harm land of a notified~~
16 ~~landowner, and a notarized letter of approval required by the board has not been~~
17 ~~obtained by the applicant. For purposes of this section, "unreasonable harm" is~~
18 ~~limited to hydraulic impacts, including erosion or other adverse impacts that~~
19 ~~degrade the physical integrity of a roadway or real property within one mile [1.61~~
20 ~~kilometers] downstream of the system's outlet. The board shall include a written~~
21 ~~explanation of the reasons for a denial of a completed application and notify, by~~
22 ~~certified mail, the applicant and all landowners notified under subsection 2 of the~~
23 ~~approval or denial.~~

24 ~~f. The board may not deny a permit more than sixty days after receipt of the~~
25 ~~completed application for the permit. If the board fails to deny the permit~~
26 ~~application within sixty days of receipt, the permit application is deemed~~
27 ~~approved.~~

28 ~~4. A denial of a completed permit application by a water resource district board may be~~
29 ~~appealed, under section 28-34-01, to the district court of the county in which the permit~~
30 ~~application was filed. The court may approve a completed permit application denied by~~

~~a water resource district board or the state engineer if the application meets the requirements of this section.~~

~~5. A water resource district board may not be held liable to any person for issuing a permit under this section.~~

~~6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.~~

~~7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.~~

SECTION 44. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs 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
2 appeal the decision of the board to the ~~district court of the county in which the land is~~
3 ~~located in accordance with the procedure provided in section 28-34-01~~state water
4 commission appeal panel. A hearing as provided for in this section is not a prerequisite
5 to an appeal. If a complaint is frivolous in the discretion of the board, the board may
6 assess the costs of the frivolous complaint against the complainant. If the obstruction
7 is located in a road ditch, the timing and method of removal must be approved by the
8 appropriate road authority before the notice required by this section is given and
9 appropriate construction site protection standards must be followed.

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

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

17 **SECTION 45. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-53. Removal of a noncomplying dike, dam, or other device - Notice and**
20 **hearing - ~~Appeal~~ - Injunction.**

21 1. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other
22 device for water conservation, flood control, regulation, watershed improvement, or
23 storage of water, the water resource board shall promptly investigate and make a
24 determination thereon. If the board determines that a dike, dam, or other device,
25 capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic
26 meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a
27 medium-hazard or high-hazard dam, has been established or constructed by a
28 landowner or tenant contrary to this title or any rules adopted by the board, the board
29 shall notify the landowner by certified mail at the landowner's post-office address of
30 record. A copy of the notice must also be sent to the tenant, if any. The notice must
31 specify the nature and extent of the noncompliance and must state that if the dike,

1 dam, or other device is not removed within the period the board determines, but not
2 less than fifteen days, the board shall cause the removal of the dike, dam, or other
3 device and assess the cost of the removal, or the portion the board determines,
4 against the property of the landowner responsible. The notice must also state that the
5 affected landowner, within fifteen days of the date the notice is mailed, may demand,
6 in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set
7 a hearing date within fifteen days from the date the demand is received. In the event of
8 an emergency, the board may immediately apply to the appropriate district court for an
9 injunction prohibiting the landowner or tenant from constructing or maintaining the
10 dike, dam, or other device, or ordering the landowner to remove the dike, dam, or
11 other device. Assessments levied under this section must be collected in the same
12 manner as other assessments authorized by this chapter. If, in the opinion of the
13 board, more than one landowner or tenant has been responsible, the costs may be
14 assessed on a pro rata basis in proportion to the responsibility of the landowners. If a
15 complaint is frivolous in the discretion of the board, the board may assess the costs of
16 the frivolous complaint against the complainant.

- 17 2. Following removal of an unauthorized dike, dam, or other device, either by a water
18 resource board or by a party complying with an order of a water resource board, the
19 board may assess its costs against the property of the responsible landowner.

20 **SECTION 46. AMENDMENT.** Section 61-16.1-53.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-53.1. Appeal of board decisions - ~~State engineer review~~ - Closing of**
23 **noncomplying dams, dikes, or other devices for water conservation, flood control,**
24 **regulation, and watershed improvement.**

- 25 1. The board shall make the decision required by section 61-16.1-53 within a reasonable
26 time, not exceeding one hundred twenty days, after receiving the complaint. The board
27 shall notify all parties of its decision by certified mail. Any aggrieved party may appeal
28 the board's decision to the state ~~engineer~~water commission appeal panel. The appeal
29 ~~to the state engineer~~ must be made within thirty days from the date notice of the
30 board's decision has been received. The appeal must be made by submitting a written
31 notice to the state ~~engineer, which must specifically set~~water commission appeal panel

1 setting forth the specific reason why the board's decision is erroneous. The appealing
2 party ~~shall~~ also shall submit copies of the written appeal notice to the board and to all
3 nonappealing parties. ~~Upon receipt of this notice the board, if it~~ if the board has
4 ordered the removal of a dam, dike, or other device, the board is relieved of its
5 obligation to procure the removal of the dam, dike, or other device upon receipt of the
6 notice of appeal. The ~~state engineer~~ appeal panel shall handle the appeal by
7 conducting an independent investigation and making an independent determination of
8 the matter. The ~~state engineer~~ appeal panel or the panel's agents may enter property
9 affected by the complaint to investigate the complaint.

- 10 2. If the board fails to investigate and make a determination concerning the complaint
11 submitted under section 61-16.1-53 within a reasonable time, not exceeding one
12 hundred twenty days, the person filing the complaint may file the complaint with the
13 state ~~engineer~~ water commission appeal panel within one hundred fifty days of the
14 submittal date of the original complaint. The ~~state engineer~~ appeal panel shall cause,
15 without reference to chapter 28-32, ~~cause~~ the investigation and determination to be
16 made, either by action against the board or by conducting the investigation and
17 making the determination.
- 18 3. If the state ~~engineer~~ water commission appeal panel determines ~~that~~ a dam, dike, or
19 other device has been constructed or established by a landowner or tenant contrary to
20 title 61 or any rules adopted by the board, the ~~state engineer~~ appeal panel shall take
21 one of these three actions:
- 22 a. Notify the landowner by certified mail at the landowner's post-office address of
23 record;
 - 24 b. Return the matter to the jurisdiction of the board along with the investigation
25 report; or
 - 26 c. Forward the dam, dike, or other device complaint and investigation report to the
27 state's attorney.
- 28 4. If the state ~~engineer~~ water commission appeal panel decides to notify the landowner,
29 the notice must specify the nature and extent of the noncompliance and state that if
30 the dam, dike, or other device is not removed within a reasonable time as determined
31 by the ~~state engineer~~ appeal panel, but not less than thirty days, the ~~state-~~

1 ~~engineer~~appeal panel shall procure the removal of the dam, dike, or other device and
2 assess the cost of removal against the responsible landowner's property. The notice
3 from the ~~state-engineer~~appeal panel must state ~~that, within fifteen days of the date the~~
4 ~~notice is mailed,~~ the affected landowner may demand, in writing within fifteen days of
5 the date the notice is mailed, a hearing on the matter. Upon receipt of the demand, the
6 ~~state-engineer~~appeal panel shall set a hearing date within fifteen days from the date
7 the demand is received. If, ~~in the opinion of the state engineer,~~ the appeal panel
8 determines more than one landowner or tenant has been responsible, the costs may
9 be assessed on a pro rata basis in proportion to the responsibility of the landowners.
10 Upon assessment of costs, the ~~state-engineer~~appeal panel shall certify the
11 assessment to the county auditor of the county where the noncomplying dam, dike, or
12 other device is located. The county auditor shall extend the assessment against the
13 property assessed. Each assessment must be collected and paid as other property
14 taxes are collected and paid. Assessments collected must be deposited with the state
15 treasurer and credited to the contract fund established by section 61-02-64.1. Any
16 person aggrieved by action of the ~~state-engineer~~appeal panel under this section may
17 appeal the decision of the ~~state-engineer~~appeal panel to the district court under
18 chapter 28-32. A hearing by the ~~state-engineer~~appeal panel as provided for in this
19 section is a prerequisite to an appeal.

20 5. If the state ~~engineer~~water commission appeal panel, after completing the investigation
21 required under this section, decides to return the matter to the board, a complete copy
22 of the investigation report must be forwarded to the board and it must include the
23 nature and extent of the noncompliance. Upon having the matter returned to its
24 jurisdiction, the board shall carry out the ~~state-engineer's~~appeal panel's decision under
25 the terms of this section.

26 6. If the state ~~engineer~~water commission appeal panel, after completing the investigation
27 required under this section, decides to forward the dam, dike, or other device
28 complaint to the state's attorney, a complete copy of the investigation report also must
29 ~~also~~ be forwarded, ~~which and~~ and must include the nature and extent of the
30 noncompliance. The state's attorney shall prosecute the complaint under the statutory
31 responsibilities prescribed in chapter 11-16.

7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

SECTION 47. AMENDMENT. Section 61-16.1-54 of the North Dakota Century Code is amended and reenacted as follows:

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

An appeal may be taken to the state water commission or the district court from any order or decision of the water resource board by any person aggrieved, except when another appeal process is established in this chapter. ~~An~~

1. For appeals taken to the state water commission, the commission shall select three commission members to serve as an appeal panel to hear and act on the appeal on behalf of the commission. The membership of the panel may change at the discretion of the state water commission.

2. An appellant that appeals to a district court shall file an undertaking in the sum of two hundred dollars with ~~such~~the sureties ~~as may be approved~~required by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned ~~that~~on the appellant ~~will prosecute~~prosecuting the appeal without delay and ~~will pay~~paying all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and is governed by the procedure provided in section 28-34-01.

3. Unless otherwise provided in this title and notwithstanding section 28-34-01, an aggrieved party may appeal a decision of a water resource board within:

1 a. Thirty days after the date the notice of the decision was published; or

2 b. If notice of the decision was not required to be published, within sixty days after
3 the date the decision was made.

4 **SECTION 48. AMENDMENT.** Section 61-16.1-58 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-58. Attorney general to assist boards - Employment of counsel.**

7 The attorney general shall render legal opinions or ~~such~~ other assistance to water resource
8 boards as is required to be rendered to state officers by section 54-12-01. The water resource
9 board, ~~however,~~ may employ other counsel to advise and represent ~~it in such actions and~~
10 ~~appeals and in its proceedings~~ the board if the attorney general is unable to provide the
11 necessary legal services.

12 **SECTION 49. AMENDMENT.** Section 61-16.1-62 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16.1-62. Validating organization and acts of water resource districts and county**
15 **drain boards.**

16 ~~Nothing contained in this chapter shall be~~ A provision of this chapter may not be construed
17 as impairing, invalidating, or in any manner affecting the validity of warrants, bonds, obligations,
18 acts, or proceedings of water resource districts or county drain boards which existed prior to the
19 passage and approval of this chapter issued or taken before the effective date of the provision.

20 **SECTION 50. AMENDMENT.** Section 61-16.1-63 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-63. Penalty for violation of chapter.**

23 Any person violating any of the provisions of this chapter shall, ~~if no other criminal penalty is~~
24 ~~specifically provided, be~~ is guilty of a class B misdemeanor unless another criminal penalty is
25 provided specifically for the violation. The board may bring a civil action to recover damages
26 resulting from a violation and the costs incurred by the board for the civil action.

27 **SECTION 51. REPEAL.** Sections 61-16.1-01 and 61-16.1-61 ~~and chapters,~~ chapter 61-21,
28 ~~and 61-32~~ sections 61-32-07, 61-32-08, and 61-32-10 of the North Dakota Century Code are
29 repealed.

January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2208

Page 1, line 1, replace "six" with "five"

Page 1, line 3, after "reenact" insert "section 11-23-02,"

Page 1, line 4, replace "subsection" with "subsections 1 and"

Page 1, line 4, replace the second "section" with "sections 61-16-08.1 and"

Page 1, line 5, replace "subsection" with "subsections 4 and"

Page 1, line 5, after the third comma insert "61-16.1-10,"

Page 1, line 9, after the third comma insert "61-16.1-51, 61-16.1-53, 61-16.1-53.1,"

Page 1, line 9, after the fourth comma insert "61-16.1-58,"

Page 1, line 11, replace "and chapters" with ", chapter"

Page 1, line 11 after "61-21" insert a comma

Page 1, line 12, replace "61-32" with "sections 61-32-07, 61-32-08, and 61-32-10"

Page 1, line 12, remove "drain permits,"

Page 1, after line 14, insert:

"SECTION 1. AMENDMENT. Section 11-23-02 of the North Dakota Century Code is amended and reenacted as follows:

11-23-02. Auditor to prepare budget of county expenditures.

The county auditor shall prepare an annual budget for the general fund, each special revenue fund, and each debt service fund of the county in the form prescribed by the state auditor. The budget must set forth specifically:

1. The detailed breakdown of the estimated revenues and appropriations requested for each fund for the ensuing year.
2. The detailed breakdown of the revenues and expenditures for each fund for the preceding year.
3. The detailed breakdown of estimated revenues and expenditures for each fund for the current year.
4. The transfers in or out for each fund for the preceding year and the estimated transfers in or out for the current year and the ensuing year.
5. The beginning and ending balance of each fund or estimates of the balances for the preceding year, current year, and ensuing year.
6. The tax levy request for any funds levying taxes for the ensuing year.

7. The certificate of levy showing the amount levied for each fund and the total amount levied.
8. The budget must be prepared on the same basis of accounting used by the county for its annual financial reports.
9. The amount of cash reserve for the general fund and each special revenue fund, not to exceed seventy-five percent of the appropriation for the fund. For the funds of a water resource district in the county, the county auditor shall include a report indicating whether the water resource district is in compliance with the seventy-five percent limitation."

Page 2, line 1, overstrike "and drainage"

Page 2, line 1, remove "permit"

Page 2, line 1, overstrike "appeals from water resource boards to the state"

Page 2, line 2, overstrike "engineer pursuant to chapter"

Page 2, line 2, remove "61-16.1"

Page 2, after line 31, insert:

"5. Notwithstanding subsection 3, snagging and clearing is not deemed regular maintenance and is eligible for a cost-share."

Page 3, after line 9, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 61-16-08 of the North Dakota Century Code is amended and reenacted as follows:

1. When a water resource district has been created, any resident landowner in the district, except a county commissioner, is eligible, subject to the provisions of this section, for appointment to the water resource board. ~~After June 30, 1985, when~~When the term of office of a district manager has expired, the manager's successor shall hold office for three years from the first day of January next following the date of the successor's appointment. The term of office of a manager does not terminate until the successor in office is appointed and qualified. In case the office of any district manager becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant. Within three months after the start of an individual's term as a district manager, the individual shall attend a course on water management, and each district manager shall attend a course on water management every three years during the manager's term.
 - a. The water management course must be conducted by an employee of the office of state engineer.
 - b. The office of state engineer shall record each water resource board member's attendance at the course and submit the record of attendance to the county auditor of the county in which the district is situated.
 - c. If a water resource board member has not completed a water management course in the time allowed under this section, the

member may not vote on water resource board business and is not entitled to receive compensation or reimbursement under this section until the member completes the required water management course.

- d. Each January, a county auditor shall submit a report to the board of county commissioners which indicates whether the members of the board of each water resource district encompassing land situated in the county have fulfilled the educational requirements in this section."

Page 3, after line 19, insert:

"SECTION 7. AMENDMENT. Section 61-16-08.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16-08.1. Appointment of alternate board member due to conflict of interest or illness.

When a member of a water resource board has a conflict of interest in a specific issue before the board or is unable to fulfill the duties of a board member because of physical or mental illness, the county commissioners ~~may~~shall appoint a person to serve as an alternate to the disqualified board member. If the disqualification is for a conflict of interest, the alternate board member ~~is to~~shall serve only for the purpose of deciding the particular issue causing the conflict. If the disqualification is for physical or mental illness, the alternate board member ~~is to~~must be appointed by the county commissioners only for one meeting at a time."

Page 3, line 25, after "project" insert ", regardless of whether the land is within the water resource district making the assessment"

Page 4, line 3, after "3." insert ""Benefit" means an increase in the value of land resulting from removing a burden on the land or making the land more adaptable for the purpose for which the land is used.

4."

Page 4, line 6, replace "4." with "5."

Page 4, line 7, replace "5." with "6."

Page 4, line 9, replace "6." with "7."

Page 4, line 17, replace "7." with "8."

Page 4, line 18, replace "8." with "9."

Page 4, line 21, replace "9." with "10."

Page 4, line 23, replace "10." with "11."

Page 4, line 28, replace "11." with "12."

Page 5, line 1, replace "12." with "13."

Page 5, line 6, replace "13." with:

"14. "Right of way" means a corridor for the public which is deeded to or taken by an assessment district.

15."

Page 5, after line 6, insert:

"SECTION 9. AMENDMENT. Subsection 4 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Procure~~if the appropriate county engineer is unable to provide necessary engineering services, procure the services of engineers and other technical experts, and, if the appropriate state's attorney is unable to provide necessary legal services, employ an attorney ~~or attorneys~~ to assist, advise, and act for it ~~in its proceedings~~for the board."

Page 7, after line 19, insert:

"SECTION 13. AMENDMENT. Section 61-16.1-10 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-10. Responsibilities and duties of water resource board.

Each water resource board shall:

1. Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management ~~problem or~~ problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme ~~must~~shall share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project ~~shall~~must be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
 - d. Consideration of an economic analysis as defined in section 61-02-02.

- e. Public input including, for drainage projects, solicitation of public input by providing notice and hearing opportunities for all landowners within ten miles downstream of any proposed drain outlet.
- 6. Require that When a project will cause an adverse impact to lands of other landowners, require appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners before contractors are secured to perform work on the project.
- 7. Unless otherwise specified, publish notices in the official newspaper of the relevant county when publication is required by law.
- 8. If the water resource district submits annual reports to the state auditor under subsection 3 of section 54-10-14, submit separate, standalone, audited financial statements at least once every two years to the state auditor. This requirement applies regardless of whether the water resource district meets the requirements to be audited as a component unit of a county or other political subdivision."

Page 8, line 21, after "land" insert ", including land in other water resource districts."

Page 9, line 22, after "board" insert "in preparing for the hearings and elections required under this chapter. After the adoption of a resolution under this subsection, the water resource board shall ensure the project, if approved by a vote of affected landowners, is completed in no more than two years. If the project is not completed within the two-year period, assessments for the project may not be levied until the project is complete"

Page 10, line 23, after the period insert "A lot, piece, or parcel of land in another water resource district which will receive benefits from the project must be included in the list."

Page 12, line 8, remove "immediately"

Page 12, line 8, after "shall" insert "open the ballots, count the votes, and"

Page 12, line 8, remove the overstrike over "immediately"

Page 12, line 21, overstrike "a newspaper of general circulation in the area in which the"

Page 12, line 22, overstrike "affected landowners reside and in"

Page 12, line 23, overstrike "benefited" and insert immediately thereafter "affected"

Page 12, after line 25, insert:

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

Ballot forms - Procedures for opening cast ballots.

In any election conducted by a water resource board under this chapter, the water resource board:

1. Shall provide ballots in a form that prevents disclosure of the votes cast on the ballots until the ballots are opened for counting.
2. Shall provide notice of the deadline by which ballots must be cast.

3. May not open any cast ballots until the deadline by which ballots must be cast has passed."

Page 13, line 18, overstrike the first "and" and insert immediately thereafter ". The board"

Page 13, line 20, remove the overstrike over "and" and insert immediately thereafter "shall determine the value, in dollars, of the benefit to each of the lots and parcels"

Page 13, line 27, after "land" insert ", other than a right of way."

Page 14, after line 23, insert:

- "4. Notwithstanding subsections 1, 2, and 3, land that is higher than the land being drained by an assessment drain may not be assessed for the cost of constructing or maintaining the drain unless the higher land was changed artificially to increase the amount of water flowing away from the land."

Page 15, line 20, overstrike "engineer" and insert immediately thereafter "**water commission appeal panel**"

Page 15, line 25, overstrike "engineer" and insert immediately thereafter "water commission appeal panel"

Page 15, line 27, overstrike "engineer" and insert immediately thereafter "water commission appeal panel"

Page 15, line 29, replace "state engineer" with "appeal panel"

Page 15, line 30, overstrike "state engineer" and insert immediately thereafter "appeal panel"

Page 15, line 31, overstrike "state engineer's" and insert immediately thereafter "appeal panel's"

Page 16, line 1, overstrike "state engineer" and insert immediately thereafter "appeal panel"

Page 16, line 2, overstrike "state engineer" and insert immediately thereafter "appeal panel"

Page 16, line 5, overstrike "engineer" and insert immediately thereafter "water commission"

Page 16, line 7, overstrike "engineer" and insert immediately thereafter "water commission appeal panel"

Page 16, line 8, overstrike "state engineer" and insert immediately thereafter "appeal panel"

Page 16, line 11, overstrike "state engineer" and insert immediately thereafter "appeal panel"

Page 18, line 10, overstrike "embraces" and insert immediately thereafter "or affected lands are situated in"

Page 18, line 10, overstrike the second "district"

Page 18, line 14, overstrike "district"

Page 18, line 14, after "lands" insert "subject to assessment"

Page 18, line 16, after "assessments" insert "; and documentation necessary for the auditor to make an independent determination the assessments to be levied do not exceed the total cost of the project"

Page 18, line 27, after "to" insert ", and verified by."

Page 25, line 17, after the period insert "Annually, a water resource board shall provide sufficient documentation to the board of county commissioners for each county in which assessed land is situated for the county commissioners to verify the accumulated maintenance fund does not exceed the limit in this subsection. A water resource board may not provide for maintenance of an assessment drain using the funds accumulated from six years of levied assessments unless the board provides the county commissioners of each county in which assessed lands are situated documentation demonstrating the need for the maintenance project to the satisfaction of the county commissioners."

Page 25, line 22, after the period insert "A board may not divide necessary maintenance into multiple projects or phases to avoid the approval requirements in this subsection."

Page 29, remove lines 3 through 31

Page 30, remove lines 1 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 30

Page 33, replace lines 1 through 5 with:

"SECTION 44. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the ~~district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01~~state water commission appeal panel. A hearing as provided for in this section is not a prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may

assess the costs of the frivolous complaint against the complainant. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

2. For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain.
3. Following removal of an obstruction to a drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

SECTION 45. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike, dam, or other device - Notice and hearing - ~~Appeal~~- Injunction.

1. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dike, dam, or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant.

2. Following removal of an unauthorized dike, dam, or other device, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

SECTION 46. AMENDMENT. Section 61-16.1-53.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53.1. Appeal of board decisions - ~~State engineer review~~ - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the state ~~engineer~~water commission appeal panel. The appeal to the ~~state engineer~~ must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state ~~engineer~~, ~~which must specifically set~~water commission appeal panel setting forth the specific reason why the board's decision is erroneous. The appealing party shall also shall submit copies of the written appeal notice to the board and to all nonappealing parties. ~~Upon receipt of this notice the board, if it~~If the board has ordered the removal of a dam, dike, or other device, the board is relieved of its obligation to procure the removal of the dam, dike, or other device upon receipt of the notice of appeal. The ~~state engineer~~appeal panel shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The ~~state engineer~~appeal panel or the panel's agents may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint submitted under section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state ~~engineer~~water commission appeal panel within one hundred fifty days of the submittal date of the original complaint. The ~~state engineer~~appeal panel shall cause, without reference to chapter 28-32, ~~cause~~ the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the state ~~engineer~~water commission appeal panel determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the ~~state engineer~~appeal panel shall take one of these three actions:
 - a. Notify the landowner by certified mail at the landowner's post-office address of record;
 - b. Return the matter to the jurisdiction of the board along with the investigation report; or
 - c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

4. If the state ~~engineer~~water commission appeal panel decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the dam, dike, or other device is not removed within a reasonable time as determined by the ~~state-engineer~~appeal panel, but not less than thirty days, the ~~state-engineer~~appeal panel shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property. The notice from the ~~state-engineer~~appeal panel must state that, ~~within fifteen days of the date the notice is mailed,~~ within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing within fifteen days of the date the notice is mailed, a hearing on the matter. Upon receipt of the demand, the ~~state-engineer~~appeal panel shall set a hearing date within fifteen days from the date the demand is received. If, ~~in the opinion of the state engineer,~~ the appeal panel determines more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the ~~state-engineer~~appeal panel shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the ~~state-engineer~~appeal panel under this section may appeal the decision of the ~~state-engineer~~appeal panel to the district court under chapter 28-32. A hearing by the ~~state-engineer~~appeal panel as provided for in this section is a prerequisite to an appeal.
5. If the state ~~engineer~~water commission appeal panel, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the ~~state-engineer's~~appeal panel's decision under the terms of this section.
6. If the state ~~engineer~~water commission appeal panel, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report also must also be forwarded, ~~which~~ and must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners."

Page 33, line 10, after the first "the" insert "state water commission or the"

Page 33, line 12, overstrike the "An" and insert immediately thereafter:

"1. For appeals taken to the state water commission, the commission shall select three commission members to serve as an appeal panel to hear and act on the appeal on behalf of the commission. The membership of the panel may change at the discretion of the state water commission.

2. An"

Page 33, line 12, after "appellant" insert "that appeals to a district court"

Page 33, after line 20, insert:

"3. Unless otherwise provided in this title and notwithstanding section 28-34-01, an aggrieved party may appeal a decision of a water resource board within:

a. Thirty days after the date the notice of the decision was published; or

b. If notice of the decision was not required to be published, within sixty days after the date the decision was made.

SECTION 48. AMENDMENT. Section 61-16.1-58 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-58. Attorney general to assist boards - Employment of counsel.

The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, ~~however,~~ may employ other counsel to advise and represent it ~~in such actions and appeals and in its proceedings~~ the board if the attorney general is unable to provide the necessary legal services."

Page 34, line 6, replace "and chapters" with ", chapter"

Page 34, line 6, after "61-21" insert a comma

Page 34, line 7, replace "61-32" with "sections 61-32-07, 61-32-08, and 61-32-10"

Re-number accordingly



North Dakota Legislative Council

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TOPIC CHART FOR 21.0194.01003

Topic	North Dakota Century Code Section	Page of Mark Up Where Topic is Addressed (21.0194.01003m)	Bill Page Amended (21.0194.01000)
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Documentation to auditor to make sure assessments don't exceed cost of project	61-16.1-28	23	18
Annual documentation to auditor	61-16.1-45	30	25
Projects may not be split to avoid process	61-16.1-45	30	25
Requirement to consult state's attorney, county auditor, and Attorney General first	61-16.1-09, 61-16.1-58	7, 44	5, 33
Required alternate in cases where there is a conflict of interest	61-16-08.1	5	3
10-mile notification requirement	61-16.1-10	11	7
Economic analysis requirement	61-16.1-10	11	7
Board member education requirements	61-16-08	4-5	3
Publication requirements and appeal deadline	61-16.1-54	43-44	33
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