

HOUSE BILL NO. 1041

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Water Resources)

1 A BILL for an Act to amend and reenact section 61-16.1-53 of the North Dakota Century Code,
2 relating to removal of a noncomplying dike, dam, or other device.

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

4 **SECTION 1. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-53. Removal of a noncomplying dike, dam, or other device - Notice and**
7 **hearing - Appeal - Injunction.**

8 1. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other
9 device for water conservation, flood control, regulation, watershed improvement, or
10 storage of water, the water resource board shall promptly investigate and make a
11 determination thereon. If the board determines that a dike, dam, or other device,
12 ~~capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic~~
13 ~~meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a~~
14 ~~medium-hazard or high-hazard dam,~~ has been established or constructed by a
15 landowner or tenant contrary to this title or any rules adopted by the board, the board
16 shall notify the landowner by certified mail at the landowner's post-office address of
17 record. A copy of the notice must also be sent to the tenant, if any. The notice must
18 specify the nature and extent of the noncompliance and must state that if the dike,
19 dam, or other device is not removed within the period the board determines, but not
20 less than fifteen days, the board shall cause the removal of the dike, dam, or other
21 device and assess the cost of the removal, or the portion the board determines,
22 against the property of the landowner responsible. The notice must also state that the
23 affected landowner, within fifteen days of the date the notice is mailed, may demand,
24 in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set

- 1 a hearing date within fifteen days from the date the demand is received. In the event of
2 an emergency, the board may immediately apply to the appropriate district court for an
3 injunction prohibiting the landowner or tenant from constructing or maintaining the
4 dike, dam, or other device, or ordering the landowner to remove the dike, dam, or
5 other device. Assessments levied under this section must be collected in the same
6 manner as other assessments authorized by this chapter. If, in the opinion of the
7 board, more than one landowner or tenant has been responsible, the costs may be
8 assessed on a pro rata basis in proportion to the responsibility of the landowners. If a
9 complaint is frivolous in the discretion of the board, the board may assess the costs of
10 the frivolous complaint against the complainant.
- 11 2. Following removal of an unauthorized dike, dam, or other device, either by a water
12 resource board or by a party complying with an order of a water resource board, the
13 board may assess its costs against the property of the responsible landowner.