Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025

SENATE BILL NO. 2059
(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

AN ACT to amend and reenact sections 61-04-05.1, 61-16.1-53.1, and 61-32-08 of North Dakota Century Code, relating to hearing and appeals processes of the department of water resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.

2. A person filing written comments also may request a public hearing for the department to obtain additional information to evaluate the application or to receive public input by the date specified by the department of water resources under subsection 5 of section 61-04-05. If a request for a public hearing is made and the department determines a public hearing is necessary, the department shall designate a time and place for the public hearing and ~~serve a notice of hearing upon~~notify the applicant and any person who filed written comments~~. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure~~ by certified mail at least twenty days before the hearing.

3. If two or more municipal or public use permitholders request the public hearing to be held locally, the department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.

4. The department of water resources shall consider all written comments received and testimony presented at a public hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:

   a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;

   b. Denial of the application; or

   c. Deferral of the application.

5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the department of water resources or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made and the department determines

an adjudicative proceeding is necessary, the department shall designate a time and place for the adjudicative proceeding and ~~serve the notice of adjudicative proceeding upon~~notify the applicant and any person who filed written comments~~. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure~~ by certified mail at least twenty days before the hearing.

SECTION 2. 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 - Department of water resources 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 department of water resources. The appeal to the department 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 department which must state specifically the reason why the board's decision is erroneous. The appealing party 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 has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The department 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 within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the department of water resources within one hundred fifty days of the submittal date of the original complaint. Without reference to chapter 28-32, the department shall 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 department of water resources determines 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 department 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 department of water resources 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 department, but not less than thirty days, the department 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 department also must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the department shall set a hearing date within fifteen days from the date the demand is received.~~ If, in the opinion of the department, 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 department 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 department under this section may appeal the decision of the department to the district court under chapter 28-32. A hearing by the department as provided for in this section is a prerequisite to an appeal.~~

5. If the department of water resources, 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 must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the department's decision under the terms of this section.

6. If the department of water resources, 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 must also be forwarded 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. If the department of water resources dismisses the dam, dike, or other device complaint, the department of water resources shall notify all parties of record to the appeal and include in its notification the department of water resource's investigation report, if applicable.

8. 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.

9. Any party aggrieved by a decision of the department of water resources under this section may request a hearing under section 61-03-22 and appeal the decision to district court under chapter 28-32. A hearing by the department of water resources under this section is a prerequisite to an appeal.

SECTION 3. AMENDMENT. Section 61-32-08 of the North Dakota Century Code is amended and reenacted as follows:

61-32-08. Appeal of board decisions - Department of water resources review - Closing of noncomplying drains.

1. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed 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 department of water resources. The appeal to the department 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 department, and the notice must specify the reason why the board's decision is erroneous. The appealing party 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 has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The department 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 within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file the complaint with the department of water resources within one hundred fifty days of the submittal date of the original complaint. The department, without reference to chapter 28-32, shall 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 department of water resources determines a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the department shall take one of 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 drainage complaint and investigation report to the state's attorney.

4. If the department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as determined by the department, but not less than thirty days, the department shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, against the responsible landowner's property. ~~The notice from the department must state 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 department shall set a hearing date within fifteen days from the date the demand is received.~~ If, in the opinion of the department, 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 department shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch 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 department under this section may appeal the decision of the department to the district court under chapter 28-32. A hearing by the department under this section is a prerequisite to an appeal.~~

5. If the department of water resources, 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 department's decision under this section.

6. If the department of water resources, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must be forwarded 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. <u>If the department of water resources dismisses the drainage complaint, the department of water resources shall notify all parties of record to the appeal and include in its notification the department of water resource's investigation report, if applicable.</u>

<u>8.</u> In addition to the penalty imposed by the court on conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within a reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, 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.

9. Any party aggrieved by a decision of the department of water resources under this section may request a hearing under section 61-03-22 and appeal the decision to district court under chapter 28-32. A hearing by the department of water resources under this section is a prerequisite to an appeal.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2059.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 91	Nays 1	Absent 2

Secretary of the Senate

Received by the Governor at _____M. on _____, 2025.

Approved at _____M. on _____, 2025.

Governor

Filed in this office this _____day of _____, 2025,

at _____ o'clock _____M.

Secretary of State