

Introduced by

Senator Wardner

Representative Schmidt

1 A BILL for an Act to create and enact six new sections to chapter 61-16.1 of the North Dakota
2 Century Code, relating to procedures for drain permits, assessments projects, and operations of
3 water resource districts; to amend and reenact subsection 1 of section 54-57-03, sections
4 [61-01-23](#), 61-02-01.4 and 61-05-02.1, subsection 3 of section 61-16-08, section 61-16.1-02,
5 subsection 16 of section 61-16.1-09, and sections 61-16.1-09.1, 61-16.1-09.2, 61-16.1-15,
6 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,
7 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,
8 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,
9 61-16.1-46, 61-16.1-47, 61-16.1-48, 61-16.1-54, 61-16.1-62, and 61-16.1-63 of the North
10 Dakota Century Code, relating to assessment projects, operations of water resource districts,
11 and removal of obsolete text; to repeal sections 61-16.1-01 and 61-16.1-61 and chapters 61-21
12 and 61-32 of the North Dakota Century Code, relating to assessment drains, drain permits,
13 noncompliant drains, and obsolete provisions; and to provide a penalty.

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

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

17 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other
18 persons to preside in an administrative proceeding, all adjudicative proceedings of
19 administrative agencies under chapter 28-32, except those of the public service
20 commission, the industrial commission, the insurance commissioner, the state
21 engineer, the department of transportation, job service North Dakota, and the labor
22 commissioner, must be conducted by the office of administrative hearings in
23 accordance with the adjudicative proceedings provisions of chapter 28-32 and any
24 rules adopted pursuant to chapter 28-32. ~~But~~However, appeals hearings pursuant to

1 section 61-03-22 and drainage permit appeals from water resource boards to the state
2 engineer pursuant to chapter 61-3261-16.1 must be conducted by the office of
3 administrative hearings. Additionally, hearings of the department of corrections and
4 rehabilitation for the parole board in accordance with chapter 12-59, regarding parole
5 violations; job discipline and dismissal appeals to the board of higher education;
6 Individuals With Disabilities Education Act and section 504 due process hearings of
7 the superintendent of public instruction; and chapter 37-19.1 veterans' preferences
8 hearings for any agency must be conducted by the office of administrative hearings in
9 accordance with applicable laws.

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

12 **61-01-23. Investigation or removal of obstructions in channel.**

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

16 1. Upon a request from a landowner affected by an obstruction to a watercourse, the
17 state water commission, any water resource district, any municipality, any board of
18 county commissioners, and any federal agency authorized to construct works ~~for~~
19 ~~prevention of~~ to prevent damage by floods or ~~for abatement of~~ abate stream pollution,
20 ~~may~~ shall notify, and upon the entity's own volition, may notify, the owner of lands lying
21 adjacent to the obstructed watercourse of the entity's authority under this section as
22 follows:

23 a. The owner of adjacent lands shall remove the obstruction within thirty days of
24 receiving the notice; and

25 b. If the obstruction is not removed within the thirty days, the entity that sent the
26 notice may enter ~~upon~~ the owner's lands lying adjacent to ~~such~~ the watercourse to
27 investigate or remove, or cause to be removed from the bed, channel, or banks
28 of ~~such~~ the watercourse obstructions ~~which prevent or hinder~~ hindering the free
29 flow of water or passage of ice ~~therein~~ in the watercourse, at the owner's
30 expense. ~~However, such entry~~

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

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

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

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

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

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

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

Notwithstanding section 61-05-02, an irrigation district may not be created if the primary purpose of the district is to provide drainage benefits to residents of the district. A drainage project proposed, undertaken, approved, or subject to assessment by an irrigation district also is subject to the drain permit requirements under chapter ~~61-3261-16.1~~. Drainage benefits

1 provided by an irrigation district may not impact the authority of a water resource board to
2 assess for drainage projects under chapter 61-16.1 ~~or 61-21.~~

3 **SECTION 5. AMENDMENT.** Subsection 3 of section 61-16-08 of the North Dakota Century
4 Code is amended and reenacted as follows:

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

13 **SECTION 6. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-02. Definitions.**

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

- 17 1. "Affected landowners" means landowners whose land is subject to special
18 assessment or condemnation for a project.
- 19 2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~
20 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~
21 ~~nature or description constructed for the purpose of drainage, including dikes and~~
22 ~~appurtenant works, which area drain financed in whole or in part by special~~
23 ~~assessment. This definition may include more than one watercourse or artificial~~
24 ~~channel constructed for the purpose of drainage when the watercourses or channels~~
25 ~~drain land within a practical drainage area.~~
- 26 3. "Cleaning out and repairing a drain" means removing obstructions or sediment from a
27 drain and making repairs to the drain necessary to return the drain to a satisfactory
28 and useful condition.
- 29 4. "Commission" means the state water commission.
- 30 ~~4.5.~~ "Conservation" means planned management of water resources to prevent
31 exploitation, destruction, neglect, or waste.

1 ~~5-6.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
2 requisite proceedings regarding the removal of obstructions to a drain, removal of a
3 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
4 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
5 engineering fees, including investigation and determination costs; compliance
6 inspections; and necessary technical memorandum and deficiency review; and all
7 costs associated with any hearing conducted by a district, including preparation and
8 issuance of any findings of fact and any final closure order.

9 ~~6-7.~~ "District" means a water resource district.

10 ~~7-8.~~ "Drain" means any natural water course opened, or proposed to be opened, and
11 improved for drainage, and any artificial drain constructed for drainage. The term
12 includes dikes and appurtenant works.

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

15 ~~8-10.~~ "Maintenance" means repairing a structure or otherwise bringing a structure back to
16 the structure's original design. The term does not include widening or deepening the
17 channel of a drain with the result of increasing the flow capacity of the drain as
18 compared to the flow capacity of the drain when the most recent permit for the drain
19 was issued.

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

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

29 ~~9-13.~~ "Water resource board" means the water resource district's board of managers.

30 **SECTION 7. AMENDMENT.** Subsection 16 of section 61-16.1-09 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 16. ~~Order or initiate appropriate legal action to compel~~Notify the entity responsible for the
2 maintenance and repair of any bridge or culvert when action is needed to remove from
3 under, within, and around ~~such~~the bridge or culvert all dirt, rocks, weeds, brush,
4 shrubbery, other debris, and any artificial block ~~which~~that hinders or decreases the
5 flow of water through ~~such~~the bridge or culvert.

6 **SECTION 8. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

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

- 22 a. ~~An assessment may not exceed fifty cents per acre [-40 hectare] annually on~~
23 ~~agricultural lands and may not exceed fifty cents annually for each five hundred~~
24 ~~dollars of taxable valuation of nonagricultural property; and~~
- 25 b. ~~If the assessment is for a project costing less than one hundred thousand dollars,~~
26 ~~no action is required for the establishment of the assessment district or the~~
27 ~~assessments except the board must approve the project and assessment by a~~
28 ~~vote of two-thirds of the members and the board of county commissioners of the~~
29 ~~county in which the project is located must approve and levy the assessments to~~
30 ~~be made by a vote of two-thirds of its members.~~

- 1 (1) ~~If a board that undertakes a project finds that the project will benefit lands~~
2 ~~outside water resource district boundaries, the board shall provide notice to~~
3 ~~the water resource board where the benefited lands are located together~~
4 ~~with the report prepared under section 61-16.1-17.~~
- 5 (2) ~~The board of each water resource district containing lands benefited by a~~
6 ~~project must approve the project and assessment by a vote of two-thirds of~~
7 ~~its members. The board of county commissioners in each county that~~
8 ~~contains lands benefited by a project must approve and levy the~~
9 ~~assessment to be made by a vote of two-thirds of its members.~~
- 10 (3) ~~If a project and assessment is not approved by all affected water resource~~
11 ~~boards and county commission boards, the board of each water resource~~
12 ~~district and the board of county commissioners of each county shall meet to~~
13 ~~ensure that all common water management problems are resolved pursuant~~
14 ~~to section 61-16.1-10. In addition, the water resource board that undertakes~~
15 ~~the project may proceed with the project if the board finances the cost of the~~
16 ~~project and does not assess land outside the boundaries of the district.~~
- 17 e. ~~All revenue from an assessment under this section must be exhausted before a~~
18 ~~subsequent assessment covering any portion of lands subject to a prior~~
19 ~~assessment may be levied.~~
- 20 2. ~~Before an assessment may be levied under this section, a public hearing must be held~~
21 ~~and attended by a quorum of the affected water resource boards and a quorum of the~~
22 ~~affected boards of county commissioners. The hearing must be preceded by notice as~~
23 ~~to date, time, location, and subject matter published in the official newspaper in the~~
24 ~~county or counties in which the proposed assessment is to be levied. The notice must~~
25 ~~be published at least ten days but not more than thirty days before the public~~
26 ~~hearing.~~ Assessments under this section must comply with the requirements of this
27 chapter.

28 **SECTION 9. AMENDMENT.** Section 61-16.1-09.2 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-16.1-09.2. Release of easements -- Procedure property interests no longer needed.**

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

4 1. The governing body of another political subdivision, including a water resource
5 district, may release easements assigned to it the political subdivision from the state for
6 the construction, operation, and maintenance of dams, along with access to the dams,
7 if the dams are no longer useful and the governing body deems the release to be in
8 the best interest of the political subdivision.

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

13 **SECTION 10. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
14 amended and reenacted as follows:

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

17 1. ~~A water resource board shall have the authority,~~ either upon request or by its own
18 ~~motion, to~~ may acquire needed interest in property and provide for the cost of
19 construction, alteration, repair, operation, and maintenance of a project through
20 issuance of ~~improvement~~ warrants or with funds raised by special assessments,
21 general tax levy, issuance of revenue bonds, or by a combination of general ad
22 valorem tax, special assessments, and revenue bonds. ~~Whenever~~

23 2. A request to the board for an assessment drain must be in the form of a written petition
24 identifying the starting point, terminus, and general course of the drain. An assessment
25 drain may include more than one watercourse or artificial channel constructed for
26 drainage when the watercourses or channels drain land within a practical drainage
27 area. The petition must be signed by no less than six landowners that own land to be
28 drained by the proposed drain, or a majority of landowners that own land to be drained
29 by the proposed drain if the majority is fewer than six. If among the leading purposes
30 of the proposed drain are benefits to the health, convenience, or welfare of the
31 residents of any city, the petition must be signed by a sufficient number of the property

1 owners of the city to satisfy the board there is a public demand for the drain. The
2 board also shall notify all owners of land that may be assessed for the project if the
3 project is approved. The board shall take reasonable steps to identify which land may
4 be assessed.

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

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

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

- 22 1. A water resource board may require the persons that requested an assessment
23 project under section 61-16.1-15 to file a bond with the request in a sum sufficient to
24 pay all expenses, including the cost of surveys, incurred by the board if the board
25 denies the request. However, the requesters may not be required to pay the expenses
26 if the request is approved by the board, regardless of whether the project is
27 constructed.
- 28 2. If the board denies a request for an assessment project, the board may bring an action
29 against the requesters or the requesters' bond for all expenses incurred in the board's
30 proceedings, and the requesters are jointly and severally liable for the expenses
31 unless the board pays the expenses out of funds available to the board.

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

3 **61-16.1-17. Financing of special improvements with special assessments - Procedure.**

4 ~~When it is proposed to finance~~

5 1. ~~If a water resource board or other person proposes a project to be financed in whole~~
6 ~~or in part the construction of a project with funds raised through the collection of~~
7 ~~special assessments levied against lands and premises benefited by construction and~~
8 ~~maintenance of such project, the water resource board shall examine the proposed~~
9 ~~project, and if in its opinion further proceedings are warranted, it and decide whether~~
10 ~~the request was submitted properly and whether construction and maintenance of the~~
11 ~~proposed project is necessary. If the board decides the request was submitted~~
12 ~~properly and construction and maintenance of the proposed project is necessary, the~~
13 ~~board shall adopt a resolution and declare that stating~~ it is necessary to construct and
14 maintain the project. The resolution shall briefly must state the nature and purpose of
15 the proposed project and shall designate a registered engineer to assist the board.

16 2. For the purpose of making examinations or surveys for the proposed project, the
17 board or its employees, after written notice to each landowner, may enter upon any
18 land on which the proposed project is located or any other lands necessary to gain
19 access. The engineer shall prepare a report consisting of profiles, plans, and
20 specifications of the proposed project and estimates of the total cost thereof. The
21 estimate of costs prepared by the engineer shall must include ~~acquisition of right~~ the
22 cost of acquiring rights of way and shall be in sufficient detail to allow for the board to
23 determine the probable share of the total costs ~~that will to~~ be assessed against each of
24 the affected landowners in the proposed project assessment district.

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

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

3 **61-16.1-18. Hearing~~Special assessments hearing~~ - Notice - Contents.**

- 4 1. Upon the filing of the engineer's report ~~provided for in~~under section 61-16.1-17, and
5 after satisfying the requirements of section 61-16.1-21, the water resource board shall
6 fix a date and place for public hearing on the proposed project. The date set for the
7 hearing must be not less than twenty days after the mailing of the notice required
8 under this section. The place of hearing must be in the vicinity of the proposed project
9 and must be convenient and accessible for the majority of the affected landowners
10 subject to ~~assessment for the project or whose property is subject to condemnation for~~
11 ~~the proposed project.~~
- 12 2. The board shall cause a complete list of the benefits and assessments to be made,
13 setting forth ~~each county, township, or city assessed in its corporate capacity as well~~
14 ~~as each~~ political subdivision and each lot, piece, or parcel of land to be assessed; ~~the~~
15 ~~amount each is~~ to be benefited by the ~~improvement~~project; and the amount to be
16 assessed against each. At least ten days before the hearing, the board shall file with
17 the county auditor of each county ~~or counties~~ in which the project is or will be located
18 the list showing the percentage ~~assessment~~to be assessed against each parcel of
19 land benefited ~~by the proposed project~~ and the approximate assessment in terms of
20 money to be apportioned ~~thereto~~ to the parcel. Notice of the filing must be included in
21 the notice of hearing.
- 22 3. Notices of the hearing must contain a copy of the resolution of the board ~~as well as~~and
23 the time and place where the board will conduct the hearing. The notice of hearing
24 must specify the general nature of the project as finally determined by the engineer
25 and the board. The notice of hearing also must ~~also~~ specify when and where votes
26 concerning the proposed project may be filed. The board shall cause the notice of
27 hearing to be published once a week for two consecutive weeks in the newspaper or
28 newspapers of general circulation in the area in which the affected landowners reside
29 and in the official county newspaper of each county in which the benefited lands are
30 located.

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

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

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

22 **61-16.1-19. Voting on proposed assessment projects.**

23 At the hearing, the affected landowners, and any ~~county, township, or city~~political
24 subdivision to be assessed, must ~~also~~ be informed when and where votes concerning the
25 proposed project may be filed. Affected landowners, and the governing body of any ~~county,~~
26 ~~township, or city~~political subdivision to be assessed, have thirty days after the date of the
27 hearing to file their votes with the secretary of the water resource board concerning the project.
28 Once the deadline for filing votes has been reached, no more votes may be filed ~~and no person~~
29 ~~may withdraw a vote or withdrawn.~~ A vote that is not filed by the deadline may not be counted as
30 being in favor of or opposed to the project or included in the number of votes filed. Any
31 withdrawal of a vote concerning the proposed project before ~~that time~~the deadline must be in

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

20 **SECTION 15. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-20. Assessments - Voting right or powers of landowners.**

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

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

5 **SECTION 16. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-16.1-21. Assessment of cost of project.**

8 ~~Whenever the~~

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

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

21 2. b. Any lot, piece, or parcel of land which is benefited directly ~~benefited by such~~
22 ~~improvement~~.

23 2. In determining benefits the board shall consider, among other factors, property values,
24 degree of improvement of properties, productivity, and the water management policy
25 ~~as expressed in section 61-16.1-15 of this state~~. Property belonging to the United
26 States shall ~~be~~is exempt from ~~such~~ assessment, unless the United States has
27 provided for the payment of any assessment ~~which that~~ may be levied against
28 ~~its federal~~ property for benefits received. Benefited property belonging to ~~counties,~~
29 ~~cities, school districts, park districts, and townships shall not be~~political subdivisions is
30 not exempt from such assessment and political. Political subdivisions ~~whose that have~~
31 property ~~is so~~ assessed shall provide for the payment of ~~such~~the assessments,

1 installments ~~thereof~~ of the assessments, and interest ~~thereon~~ on the assessments, by
2 the levy of taxes according to law. Any county, township, or city assessed in its
3 corporate capacity for benefits received shall provide for the payment of such
4 assessments, installments thereof, and interest thereon ~~from its~~ from a general fund or
5 by levy of a general property tax against all the taxable property ~~therein~~ in the political
6 subdivision in accordance with law. ~~No tax limitation provided by any~~ Tax limitations
7 under a statute of this state shall do not apply to tax levies made by any such political
8 subdivision for the purpose of paying any special assessments made ~~in accordance~~
9 ~~with the provisions of~~ under this chapter. ~~There shall be attached~~ A water resource
10 board shall attach to the list of assessments a certificate signed by a majority of the
11 members of the board certifying ~~that the same~~ the list of assessments is a true and
12 correct assessment of the benefit ~~therein~~ described to the best of ~~their~~ the board
13 members' judgment and ~~stating the several~~ identifying the items of expense included in
14 the assessment.

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

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

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

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

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

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

14 **61-16.1-23. Assessments - Appeal to state engineer.**

15 ~~After~~Within thirty days after the hearing ~~provided for in~~under section 61-16.1-22, affected
16 landowners ~~and~~or any political subdivision subject to assessment, having not less than twenty
17 percent of the possible votes, as determined by section 61-16.1-20, ~~who believe that~~which
18 believes the assessment ~~had not been~~was not fairly or equitably made, or ~~that~~ the project is not
19 properly located or designed, may appeal to the state engineer by petition, ~~within ten days after~~
20 ~~the hearing on assessments,~~ to make a review of the assessments and to examine the location
21 and design of the proposed project. Upon receipt of ~~such~~the petition, the state engineer shall
22 examine the lands assessed and the location and design of the proposed project, ~~and if it~~
23 ~~appears that.~~ If the state engineer believes the assessments ~~have not been~~were not made
24 equitably, the state engineer may ~~proceed to~~ correct and adjust the ~~same~~assessments, and the
25 state engineer's correction and adjustment of ~~said~~ assessment is final. ~~Should it appear that,~~ in
26 ~~the judgment of~~ the state engineer, believes the project ~~has been improperly~~was located or
27 designed improperly, the state engineer may order a relocation and redesign. ~~Such relocation~~
28 ~~and redesign~~ that must be followed in the construction of the proposed project. Upon filing a
29 bond for two hundred fifty dollars with the board ~~for the payment of~~to pay the costs of the state
30 engineer in the matter, any landowner or political subdivision ~~who or which~~that claims ~~that~~ the
31 landowner or political subdivision will receive no benefit ~~at all~~ from the construction of a new

1 project may appeal to the state engineer, within ~~ten~~thirty days after the hearing on
2 assessments, the question of whether there is any benefit. The state engineer may not
3 determine the specific amount of benefit upon an appeal by an individual landowner or political
4 subdivision; but shall ~~only~~ determine ~~if~~whether there is any benefit to the landowner or political
5 subdivision, and the determination of the state engineer ~~upon such question~~ is final.

6 **SECTION 19. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16.1-24. When assessments may be made.**

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

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

25 **SECTION 20. AMENDMENT.** Section 61-16.1-26 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-16.1-26. Reassessment of benefits.**

28 The water resource board may hold at any time or, upon petition of any affected landowner
29 or political subdivision ~~which has been~~ assessed after a project has been in existence for at
30 least one year, shall hold a hearing for the purpose of determining the benefits of ~~such~~the
31 project to each tract of land affected. Notice of the hearing must be given by publication once

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

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

16 **61-16.1-27. Correction of errors and mistakes in special assessments - Requirements**
17 **governing.**

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

22 **SECTION 22. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-28. Certification of assessments to county auditor.**

25 When a water resource board, by resolution, has caused special assessments to be levied
26 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
27 special assessments ~~shall will~~ bear, ~~which and the~~ rate ~~shall may~~ not exceed one and one-half
28 percent above the warrant rate. Interest on unpaid special assessments ~~shall must~~ commence
29 on the date the assessments are ~~finally~~ confirmed by the board. Special assessments may be
30 certified and made payable in equal annual installments, the last of which ~~shall must~~ be due and
31 payable not more than thirty years after the date of the warrants to be paid. The secretary of the

1 district shall certify to the county auditor of the county in which the district is situated, or if the
2 district embraces more than one county, to the county auditor of each county in which district
3 lands subject to ~~such~~the special assessments are situated, the total amount assessed against
4 ~~such~~ lands in that county and the proportion or percentage of ~~such~~the amount assessed against
5 each piece, parcel, lot, or tract of land. The secretary of the district shall ~~also~~ file with the county
6 auditor of each county in which district lands lie a statement showing the cost of the project, the
7 part ~~thereof~~of the project, if any, ~~which will~~to be paid out of the general taxes, and the part to be
8 financed by special assessments. Funds needed to pay the cost of maintaining a project may
9 be raised in the same manner as funds were raised to meet construction costs. If the project
10 was financed in whole or in part through the use of special assessments, the water resource
11 board shall prorate the costs of maintaining ~~projects~~the project in the same proportion as were
12 the original costs of construction, ~~or, in the event~~if a reassessment of benefits has been
13 adopted, the costs ~~shall~~must be prorated in accordance with the reassessment of benefits as
14 authorized by ~~section 61-16.1-54~~.

15 **SECTION 23. AMENDMENT.** Section 61-16.1-29 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to**
18 **district.**

19 The county auditor of each county shall extend the special assessments certified to the
20 county auditor on the tax list of the district for the current year and ~~such~~the assessments, with
21 interest and penalties, if any, ~~shall~~must be collected by the county treasurer as general taxes
22 are collected and ~~shall~~be paid to the treasurer of the district.

23 **SECTION 24. AMENDMENT.** Section 61-16.1-30 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-16.1-30. Lien of special assessment.**

26 A special assessment imposed by a district, ~~together with interest and penalties which~~that
27 ~~accrue thereon~~on the assessment, ~~shall become~~are a lien upon the property on which the
28 assessment is levied from the time the assessment list is approved by the water resource board
29 until the assessment is fully paid. ~~Such~~The liens ~~shall~~ have precedence over all other liens
30 except general tax liens and ~~shall~~may not be divested by any judicial sale. ~~No~~A mistake in the
31 description of the property covered by the special assessment lien or in the name of the owner

1 of such ~~the~~ property shall does not defeat the lien if the assessed property can be identified by
2 the description in the assessment list. This chapter ~~shall be considered~~ is deemed notice to all
3 subsequent encumbrancers of the priority of special assessments imposed under this chapter.

4 **SECTION 25. AMENDMENT.** Section 61-16.1-31 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-31. Foreclosure of tax lien on property when general and special assessment**
7 **taxes are delinquent.**

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

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

15 **SECTION 26. AMENDMENT.** Section 61-16.1-32 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void**
18 **- Exceptions.**

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

23 4. a. Any error of any officer or board in the location and establishment ~~thereof of the~~
24 project.

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

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

28 2. The court in which any proceeding is brought to reverse or declare void the
29 proceedings by which any project has been established, or to enjoin the tax levied to
30 pay ~~therefor for the project~~, on application of either party, shall order an examination or
31 survey of the premises, ~~or survey of the same~~, or both, as ~~may be~~ deemed necessary.

1 The court, on a final hearing, shall enter ~~ana just and equitable order which is just and~~
2 ~~equitable~~, and may order the tax or any part thereof ~~of the tax~~ to remain on the tax lists
3 for collection, or, if the tax were paid under protest, may order, ~~if justice requires~~, the
4 whole or any part thereof ~~of the tax~~ to be refunded. The costs of ~~such~~ the proceedings
5 ~~shall~~ must be apportioned among the parties as ~~justice may require~~ the court deems
6 appropriate.

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

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

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

20 **SECTION 28. AMENDMENT.** Section 61-16.1-33 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 ~~**61-16.1-33. Water resource board may apportion assessments for benefits of a**~~
23 ~~**project**~~ **Apportioning assessments against a county or city or any tract of land benefited.**

24 Whenever

25 1. ~~If a water resource board discovers or ascertains that the county, a township, or city~~
26 ~~therein, or that a~~ political subdivision; or any tract, parcel, or piece of land is being
27 benefited by a project and that the county or such township, municipality the political
28 subdivision, tract, piece, or parcel of land was not included in the project area
29 assessed for the cost of construction and maintenance of the project when
30 established, the board shall commence proceedings for reassessment of lands
31 originally assessed for the cost of establishing and constructing such project and shall

1 apportion and assess the part of the balance remaining unpaid, if any, of the cost of
2 suchthe project, and the expense of maintenance, ~~which such county, township, or city~~
3 the political subdivision and each tract of land found to be benefited thereby by the
4 project should bear.

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

20 **SECTION 29. AMENDMENT.** Section 61-16.1-34 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons.**

23 ~~A district may, at any~~Any time after entering into a contract for a project to be financed in
24 whole or in part by special assessments, a water resource district may issue temporary and
25 definitive warrants on the project fund, created for that purpose, ~~in the manner and subject to~~
26 ~~the limitations prescribed in~~ accordance with section 40-24-19. If the warrants are issued to
27 finance a sewer or water project, the net revenues derived from the imposition of service
28 charges to be imposed and collected ~~with respect thereto as provided in~~ in accordance with
29 section 40-22-16 may be pledged to payment of ~~these~~the warrants, except ~~that~~ the first maturity
30 date of any ~~such warrant shall~~of the warrants may not be less than two years from the date of
31 issuance. Warrants issued under this section ~~shall~~must be in ~~such amounts as in the judgment~~

1 of the water resource board ~~will be~~determines necessary for the project. The warrants ~~shall~~must
2 bear interest at a rate ~~or rates,~~ and be sold at a price, resulting in an average net interest cost
3 not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling
4 on warrant issues sold at public sale or to the state of North Dakota or any of ~~its~~the state's
5 agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the
6 case may be, may be attached to the warrants. The warrants ~~shall~~must state upon ~~their~~the
7 warrants' face the purpose for which ~~they~~the warrants are issued and the project fund from
8 which ~~they~~the warrants are payable ~~and shall.~~ The warrants also must be signed by the
9 chairman of the water resource board and countersigned by the secretary of the water resource
10 district. The warrants ~~shall~~must be payable serially in such amounts as the board determines,
11 extending over a period of not more than thirty years.

12 **SECTION 30. AMENDMENT.** Section 61-16.1-39.2 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16.1-39.2. Maintenance of project - Exception.**

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

23 **SECTION 31. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is
24 amended and reenacted as follows:

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

26 Drains may be laid along, within the limits of, or across any public road or highway, but not
27 to the injury of ~~such~~the road. ~~In instances where it is necessary to run a drain across a~~
28 highway, ~~if a water resource board notifies the department of transportation, the board of county~~
29 ~~commissioners, or the board of township supervisors, as the case may be, when notified by the~~
30 water resource board to do so, it is necessary to run a drain across a highway, the department
31 or board shall make and pay for necessary openings through the road or highway ~~at its own~~

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

10 **SECTION 32. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-16.1-43. Construction of bridges and culverts in connection with a drain - Costs.**

13 The

- 14 1. A water resource board shall construct ~~such~~ bridges or culverts over or in connection
15 with a drain as ~~in its judgment may be~~ the board deems necessary to furnish passage
16 from one part to another of any private farm or tract of land intersected by ~~such~~ the
17 drain. The cost of ~~such construction shall~~ constructing the bridge or culvert must be
18 charged as part of the cost of constructing the drain, ~~and any such.~~ The bridge, or
19 culvert, or passageway shall must be maintained under the authority of the water
20 resource board, and the ~~necessary expense shall be deemed a~~ cost of maintaining the
21 bridge or culvert is part of the cost of ~~maintenance~~ maintaining the drain.
- 22 2. Whenever any bridge or culvert is to be constructed on a county or township highway
23 system over and across or in connection with a drain, the cost of constructing ~~such~~ the
24 bridge or culvert shall must be shared in the following manner:
 - 25 1. a. The state water commission may, ~~if funds are available,~~ participate in accordance
26 with such rules and regulations as it may prescribe provide funding according to
27 the commission's rules and policies. The remaining cost shall be borne forty
28 percent by the county and sixty percent by the district which has created the
29 need for such construction.
 - 30 2. b. If, however, moneys have not been made available to the commission for
31 participation in accordance with subsection 1, then forty percent of the cost of a

1 bridge or culvert shall be paid by the county and sixty percent shall be charged
2 as the cost of the drain to the district.

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

7 **SECTION 33. AMENDMENT.** Section 61-16.1-45 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-16.1-45. Maintenance of ~~drainage projects~~assessment drains.**

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

17 a. Agricultural lands that carried the highest assessment when the drain was
18 originally established, or received the most benefits under a reassessment of
19 benefits, may be assessed the maximum amount of four dollars per acre
20 [.40 hectare]. The assessment of other agricultural lands in the district must be
21 based upon the proportion ~~that~~ the assessment of benefits at the time of
22 construction or at the time of any reassessment of benefits bears to the
23 assessment of the benefits of the agricultural land assessed the full four dollars
24 per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any
25 one year as the ratio of the benefits under the original assessments or any
26 reassessment bears to the assessment of agricultural lands bearing the highest
27 assessment.

28 b. Agricultural lands must be assessed uniformly throughout the entire assessed
29 area. Nonagricultural property must be assessed an amount not to exceed two
30 dollars for each five hundred dollars of taxable valuation of the nonagricultural
31 property.

1 2. In case the maximum levy or assessment on agricultural and nonagricultural property
2 for any year will not produce an amount sufficient to cover the cost of ~~cleaning out and~~
3 ~~repairing~~maintaining the drain, a water resource board may accumulate a fund in an
4 amount not exceeding the sum produced by the maximum permissible levy for six
5 years.

6 3. If the cost of, or obligation for, the ~~cleaning and repairing~~maintenance of ~~any~~a drain
7 exceeds the total amount that may be levied by the board in any six-year period, the
8 board ~~shall obtain~~may not obligate the district for the maintenance costs unless the
9 board receives the approval of the majority of the landowners as determined by
10 ~~chapter 61-16.1~~section 61-16.1-20 before obligating the district for the costs.

11 4. Funds raised through a maintenance levy under this section may be used only for
12 maintenance.

13 **SECTION 34. AMENDMENT.** Section 61-16.1-46 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-46. Establishing new drains in location of invalid or abandoned drain.**

16 If any of the proceedings for the location, establishment, or construction of ~~any drain under~~
17 ~~the provisions of this chapter shall have an~~assessment drain has been enjoined, vacated, set
18 aside, declared void, or voluntarily abandoned by the water resource board, ~~for any reason~~
19 ~~whatsoever~~, the board may proceed under the provisions of sections 61-16.1-17 through
20 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as
21 the abandoned or invalid drain. For the purposes of this chapter, a drain that is not ~~properly~~
22 ~~maintained shall be~~properly is considered abandoned. When a new drain is established at
23 substantially the same location, the board shall ascertain the real value of services rendered,
24 moneys expended, and work done under the invalid or abandoned proceedings, and the extent
25 to which the ~~same~~services, moneys, and work contributes to the construction and completion of
26 the new drain. The board ~~then~~ shall ~~then~~ issue warrants in an amount not exceeding the value
27 to the new drain of the work completed on the invalid or abandoned drain and shall deliver
28 ~~such~~the new warrants, pro rata, to the owners or holders of old warrants or bonds issued under
29 the invalid or abandoned drainage proceedings, upon the surrender of ~~such~~the old warrants or
30 bonds by the ~~holder of~~warrant or bond holders thereof.

1 **SECTION 35. AMENDMENT.** Section 61-16.1-47 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-47. Drain kept open and in repair by water resource board.**

4 ~~All assessment drains that have been constructed in any district~~A water resource district
5 has authority over all assessment drains, except township drains, ~~shall be under the charge of~~
6 ~~the water resource board and it shall be the duty of~~constructed in the district, and the water
7 resource board to~~shall~~ keep ~~these~~the drains open and in good repair. ~~It shall be the mandatory~~
8 ~~duty of the board, within~~Within the limits of available funds, ~~to~~the board shall clean out and
9 repair any assessment drain when requested to do so by petition of the affected landowners
10 having fifty percent or more of the possible votes, as determined ~~according to~~under section
11 61-16.1-20.

12 **SECTION 36. AMENDMENT.** Section 61-16.1-48 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16.1-48. Assessment of costs of cleaning and repairing drains.**

15 The cost of cleaning out and repairing an assessment drain or a drainage structure
16 constructed by any governmental entity for which no continuing funds for maintenance are
17 available or which does not meet the definition of maintenance must be assessed pro rata
18 against the lands benefited in the same proportion as the original assessment of the costs in
19 establishing ~~such~~the drain, or in accordance with any reassessment of benefits if ~~there has~~
20 ~~been a reassessment of benefits under the provisions of section 61-16.1-26~~made. If no
21 assessment for construction costs or reassessment of benefits has been made, the water
22 resource board shall make assessments for the cost of the cleaning and repairing ~~such drain or~~
23 ~~drainage structure constructed by any governmental entity for which no continuing funds for~~
24 ~~maintenance are available~~ in accordance with the provisions of this chapter for the
25 establishment of a new project. The governing body of any incorporated city, by agreement with
26 the board, ~~is authorized to~~may contribute to the cost of cleaning out, repairing, and maintaining
27 a drain in excess of the amount assessed under this section, and ~~such~~the excess contribution
28 may be expended ~~for such purposes~~ by the board for cleaning out, repairing, and maintaining
29 the drain.

30 **SECTION 37.** A new section to chapter 61-16.1 of the North Dakota Century Code is
31 created and enacted as follows:

1 **Dissolution of drainage district - Abandonment of drain - Return of unexpended**
2 **assessments.**

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

16 **SECTION 38.** A new section to chapter 61-16.1 of the North Dakota Century Code is
17 created and enacted as follows:

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

19 1. Upon resolution of a board of county commissioners or water resource board, or upon
20 the filing with a board of county commissioners of a petition containing the signatures
21 of landowners possessing at least fifteen percent of the voting rights in one or more
22 drainage districts as determined under section 61-16.1-20, the board of county
23 commissioners shall set a date for a hearing on the establishment or expansion of a
24 water resource district to include the property contained within the drainage districts.
25 The board shall publish notice of the time, place, and purpose of the hearing once
26 each week for two consecutive weeks in a newspaper of general circulation in the
27 county. The second publication must be not less than ten days and not more than
28 twenty days before the date set for the hearing. If special assessments remain
29 outstanding on any property within a drainage district to be affected by the hearing, the
30 board shall notify all landowners of record subject to the special assessments by
31 ordinary mail at least ten days before the date set for the hearing. If a majority of

1 affected landowners, as determined under section 61-16.1-20, file written objections to
2 the establishment or expansion of the water resource district at the hearing, the
3 proceedings must be discontinued. Otherwise, the board shall file with the state water
4 commission a petition signed by a majority of the board for the establishment or
5 expansion of the water resource district, and the subsequent proceedings must
6 comply with this chapter and chapter 61-16.

7 2. If the requested water resource district is established or expanded, the board shall
8 dissolve the drainage districts by resolution and transfer all property, including funds,
9 of the dissolved districts to the water resource district. The funds may be expended
10 separately or jointly with other funds on projects or activities of the water resource
11 district which are of specific benefit to property within the dissolved drainage districts,
12 or the funds may be prorated among the properties within the dissolved drainage
13 districts and credited to the properties in proportion with the amount originally
14 assessed as a credit against subsequent assessments by the water resource district.

15 3. Notwithstanding subsection 2, a drainage district may not be dissolved if it has any
16 outstanding warrants, bonds, or other obligations unless the order of the board
17 dissolving the district provides for a continuance of assessments on properties within
18 the dissolved district to pay outstanding obligations or an assumption of the obligations
19 by the established or expanded water resource district. If the water resource district
20 assumes the obligations, the obligations must be spread over properties within the
21 water resource district. Sinking funds created to pay the obligations must be continued
22 in force by the water resource district until the obligations are liquidated.

23 **SECTION 39.** A new section to chapter 61-16.1 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Permit to drain surface waters required - Penalty.**

26 1. Before draining a pond; slough; lake; or sheetwater; or any series of ponds, sloughs,
27 lakes, or sheetwater; with a watershed area comprising eighty acres [32.37 hectares]
28 or more, a person shall secure a permit to do so. As used in this section, "sheetwater"
29 means shallow water that floods land not normally subject to standing water. The
30 permit application must be submitted to the state engineer. The state engineer shall
31 refer the application to the water resource district, or multiple water resource districts,

1 within which is found a majority of the watershed or drainage area of the pond, slough,
2 lake, or sheetwater for consideration and approval. The state engineer may require
3 applications approved by the district and proposing drainage of statewide or
4 interdistrict significance to be subject to final approval by the state engineer.

5 2. A permit required under this section may not be granted until an investigation,
6 conducted and paid for by the permit applicant, discloses the quantity of water to be
7 drained will not flood or adversely affect downstream lands. If the investigation shows
8 the proposed drain will flood or adversely affect lands of downstream landowners, the
9 water resource board may not issue a permit until flowage easements are obtained.
10 The flowage easements must be filed for record in the office of the recorder of the
11 county in which the lands are situated.

12 3. This section does not apply to the construction or maintenance of an existing or
13 prospective drain constructed under the supervision of a state or federal agency, as
14 determined by the state engineer.

15 4. Any person draining, or causing to be drained, a pond; slough; lake; or sheetwater; or
16 any series of ponds, sloughs, lakes, or sheetwater; with a watershed area comprising
17 eighty acres [32.37 hectares] or more, without first securing a permit to do so is liable
18 for all damage sustained by any person caused by the drain, and is guilty of an
19 infraction.

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

21 **SECTION 40.** A new section to chapter 61-16.1 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Permit to drain subsurface waters required - Penalty.**

24 1. Installation of a subsurface water management system requires a permit. A subsurface
25 water management system that uses surface intakes must be permitted exclusively
26 under this section if the system will have a drainage coefficient of three-eighths of an
27 inch [0.95 centimeters] or less. Subsurface water management systems that use
28 surface intakes must be permitted exclusively under section 38 of this Act if the system
29 will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].

30 2. a. The state engineer shall develop an application form for a permit required under
31 this section. A person seeking to construct a subsurface water management

1 system that requires a permit under this section must submit a completed
2 application to the water resource district, or multiple water resource districts,
3 within which is found a majority of the land area for consideration and approval.
4 The water resource board may charge permit applicants a fee up to one hundred
5 fifty dollars. Water resource boards shall forward copies of all approved permits
6 to the state engineer.

7 b. Upon submission of a completed application for a permit, the water resource
8 board immediately shall give notice and a copy of the submission via certified
9 mail to each owner of land within one mile [1.61 kilometers] downstream of the
10 proposed subsurface water management system outlet unless the distance to the
11 nearest waterway depicted as a perennial or intermittent stream or river on a
12 United States geological survey topography map, assessment drain, natural
13 watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case
14 notice and a copy of the submission must be given immediately to each owner of
15 land between the outlet and the nearest assessment drain, natural watercourse,
16 slough, or lake. The notice requirement in this section must be waived if the
17 applicant presents signed, notarized letters of approval from all downstream
18 landowners entitled to notice in this subsection.

19 3. a. If the water resource board receives notarized letters of approval from all
20 downstream landowners entitled to notice, the board shall approve the completed
21 permit application as soon as practicable but no later than thirty days after receipt
22 of the last letter. Otherwise, the water resource board shall review the completed
23 application at its next meeting that is at least thirty days after receipt of the
24 application. The board shall consider any written, technical evidence provided by
25 the applicant or a landowner notified under subsection 2 addressing whether the
26 land of a notified landowner will be flooded or unreasonably harmed by the
27 proposed subsurface water management system. For purposes of this section
28 "technical evidence" means written information regarding the proposed
29 subsurface water management system, prepared after consideration of the
30 design and physical aspects of the proposed system, and any adverse hydraulic
31 effects, including erosion, flood duration, crop loss, and downstream water

1 control device operation impacts, which may occur to land owned by a landowner
2 provided under subsection 2. Technical evidence must be submitted to the permit
3 applicant, notified landowners, and the board within forty-five days of the receipt
4 of the completed permit application by the board. A notified landowner may not
5 object to the proposed system unless the landowner presents technical evidence
6 under this subsection.

7 b. If the board finds, based on technical evidence, the proposed subsurface water
8 management system will flood or unreasonably harm lands of a landowner
9 notified under subsection 2, the board may require the applicant to obtain a
10 notarized letter of approval before issuing a permit for the system. The board may
11 not require a letter of approval for any land downstream of a system that outlets
12 into an assessment drain, natural watercourse, or pond, slough, or lake if notified
13 landowners did not provide technical evidence to the district.

14 c. A water resource district may attach reasonable conditions to an approved permit
15 for a subsurface water management system that outlets directly into an
16 assessment drain or public highway right of way. For purposes of this subsection,
17 "reasonable conditions" means conditions that address the outlet location, proper
18 erosion control, reseeding of disturbed areas, installation of riprap or other ditch
19 stabilization, and conditions that require all work to be done in a neat and
20 professional manner. Any condition to locate the project a minimum distance from
21 rural water supply lines may not extend beyond an existing easement for lines, or
22 no greater than twenty feet [6.1 meters] from either side of the water line if the
23 rural water line was installed under a blanket easement.

24 d. A water resource district may require a subsurface water management system
25 granted a permit under this section to incorporate a control structure at the outlet
26 into the design of the system and may require the control structure be closed
27 during critical flood periods.

28 e. A water resource district board may not deny a completed permit application
29 under this section unless the board determines, based on technical evidence
30 submitted by a landowner notified under subsection 2, the proposed water
31 management system will flood or unreasonably harm land of a notified

1 landowner, and a notarized letter of approval required by the board has not been
2 obtained by the applicant. For purposes of this section, "unreasonable harm" is
3 limited to hydraulic impacts, including erosion or other adverse impacts that
4 degrade the physical integrity of a roadway or real property within one mile [1.61
5 kilometers] downstream of the system's outlet. The board shall include a written
6 explanation of the reasons for a denial of a completed application and notify, by
7 certified mail, the applicant and all landowners notified under subsection 2 of the
8 approval or denial.

9 f. The board may not deny a permit more than sixty days after receipt of the
10 completed application for the permit. If the board fails to deny the permit
11 application within sixty days of receipt, the permit application is deemed
12 approved.

13 4. A denial of a completed permit application by a water resource district board may be
14 appealed, under section 28-34-01, to the district court of the county in which the permit
15 application was filed. The court may approve a completed permit application denied by
16 a water resource district board or the state engineer if the application meets the
17 requirements of this section.

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

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

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

25 **SECTION 41. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
28 **Jurisdiction.**

29 An appeal may be taken to the district court from any order or decision of the water
30 resource board by any person aggrieved, except when another appeal process is established in
31 this chapter. An appellant shall file an undertaking in the sum of two hundred dollars with

1 ~~such~~the sureties as ~~may be approved~~required by the clerk of the district court to which the
2 appeal is taken. The undertaking must be conditioned ~~that~~on the appellant will
3 ~~prosecute~~prosecuting the appeal without delay and ~~will pay~~paying all costs adjudged against
4 the appellant in the district court. The undertaking must be in favor of the water resource board
5 as obligee, and may be sued on in the name of the obligee. The appeal must be taken to the
6 district court of the county in which the land claimed to be affected adversely by the order or
7 decision appealed from is located and is governed by the procedure provided in section
8 28-34-01.

9 **SECTION 42. AMENDMENT.** Section 61-16.1-62 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-62. Validating organization and acts of water resource districts and county**
12 **drain boards.**

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

17 **SECTION 43. AMENDMENT.** Section 61-16.1-63 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-63. Penalty for violation of chapter.**

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

24 **SECTION 44. REPEAL.** Sections 61-16.1-01 and 61-16.1-61 and chapters 61-21 and
25 61-32 of the North Dakota Century Code are repealed.