

**2015 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1095**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1095  
1/15/2015  
Job #22043

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the definition of drain and administrative hearings for drainage projects.

### Minutes:

Attachments #1

Chairman Porter opens hearing for HB 1095.

### John Paczkowski, Chief-Regulatory Section for the Office of the State Engineer/State Water Commission

#### Attachment 1

I am here in support of HB 1095, with proposed attached amendments, which would amend ND Century Code 61-21-01(4) and 61-32-08. The proposed attached amendments recapture the grammatical intent of the State Engineer's original pre-filed bill. Secondly, the amendments add a second definition to the word "drain."

**Rep. Curt Hofstad:** The term drain, I think there should be a number of ways to reduce the capacity of land to retain water. This seems to open it up to just a myriad of different kinds of things that would cause you to classify that as a drain. This is troubling to me at first glance.

**John:** We were trying to avoid spelling each item out. We missed a term that this would encapsulate all of those.

**Rep. Hofstad:** Let's say for example that I have salty soils on my land. And I have a methodology by which I change the capacity of that land to retain that water. Is that now a drain? Because I think you just said that.

**John:** That was not the intent. If so desired we would spell out surface drain, sub-surface drain and filling. If that would be more clear.

**Rep. Hofstad:** I would be much more comfortable with spelling that out, yes.

**Rep. George Keiser:** The same thing we talked about on the other bill would be a problem on this bill...on the bottom of page 1, having to do with the 30 days.

**John:** I assumed that to be the case.

**Chairman Porter:** If you flip to page 2, it at least adds 120 days extra.

**Jennifer (last name unknown)- Attorney General's Office:**

I just want to clarify Rep. Keiser's question about the "known" or "should have known." The difference between this bill and the other bill is that the first bill is very general, so if anyone is aggrieved by any action of the State Engineer, that's kind of the catch-all provision where they can appeal. Versus this one, the dates are already specifically set out. So, actually the person who's appealing would already know what the dates are because they're the ones who have made the complaint in the first place.

6:50

**NO OPPOSITION**

Chairman Porter closed the hearing.

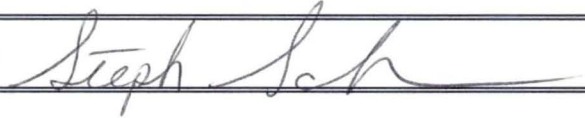
# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Pioneer Room, State Capitol

1095  
1/22/2015  
22394

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the definition of drain and administrative hearing for drainage projects.

### Minutes:

Attachments #0

**Chairman Porter:** opens the hearing.

**Chairman Porter** asks Rep. George Keiser to expound on the difference between Bill 1095 and 1097.

**Rep. George Keiser:** The easiest way to explain it is that in Bill 1097 is the first notice, and in 1095 they have already received first notice.

**Rep. George Keiser:** moves the purposed amendments.

**Rep. Corey Mock:** Seconds.

Voice vote for amendment, motion carries unanimously.

**Rep. Curt Hofstad:** moves a do pass as amended.

**Rep. George Keiser:** Seconds motion.

**Vote:** Yes 12, No 0, Absent 1.

**Carrier:** Rep. Curt Hofstad



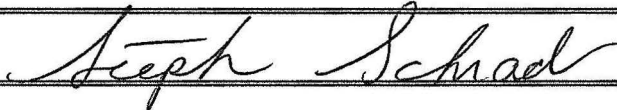
# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1095  
2/19/2015  
Job # 24132

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the definition of drain and administrative hearings for drainage projects.

### Minutes:

Attachment 2

**Chairman Porter:** We have HB1095, we need a motion to reconsider our action, whereby we passed HB 1095.

**Rep. Curt Hofstad:** So moved.

**Rep. Corey Mock:** Second.

**Voice vote:** Motion carries

**Chairman Porter:** At this time, I need a motion to reconsider our action whereby we amended HB1095.

**Rep. Bill Devlin:** So moved.

**Rep. Corey Mock:** Second.

**Voice vote:** Carries.

**Chairman Porter:** We are at the version 01000 on this bill.

**John Paczkowski, Chief-Regulatory Section Office of the State Engineer/State Water Commission:** I'm here on behalf of Todd Sando, State Engineer, in support of HB1095, with proposed amendments as attached. **Written testimony #1 and #2**

**Chairman Porter** Title 32 on the first amendment, that is federal?

**Paczowski:** Title 32 is ND Century Code.

**Chairman Porter:** That is dealing with eminent domain?

**Paczkowski:** Yes, sir.

**Chairman Porter:** Inside of the process, from the standpoint of process, is this in line with the other bills we've passed, in that process of notifications and the complaints and the 150 days? Is that the same as the other bills, so we get a level of consistency inside of the different chapters of the State Engineer?

**Paczkowski:** That's correct.

**Rep. Curt Hofstad:** Exactly who does it apply to?

**Paczkowski:** It applies to water resource districts.

**Chairman Porter:** On the top of page 3, concerning the land owner, within 15 days of date the notice is mailed, if the person isn't at home, this is regular first class mail?

**Paczkowski:** That is correct. In this case there is 150 days, the board has 120 days in which to act on a complaint. If they fail to do so, it gives an additional 30 days, after that time, to appeal to the State Engineers Office.

**Rep. Curt Hofstad:** I Move the amendment.

**Rep. Dick Anderson:** Second.

**Voice vote:** Carries.

**Rep. Curt Hofstad:** I move a **Do Pass** on HB1095 **as Amended**.

**Rep. Dick Anderson:** Second.

**Vote:** Yes 12, No 0, Absent 1.

**Rep. Curt Hofstad:** Carrier

January 22, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 18, remove "**- Continuing appropriation**"

Page 1, line 24, remove "If a decision is not"

Page 2, remove line 1

Page 2, line 2, remove "within one hundred fifty days of the complaint."

Page 2, line 14, after the first "engineer" insert ", within one hundred fifty days of the submittal date of the original complaint"

Page 3, line 11, overstrike "appropriated out of the state"

Page 3, line 12, overstrike "treasury and must be"

Page 3, line 17, replace "6." with "5."

Page 3, line 23, replace "7." with "6."

Page 3, line 28, replace "8." with "7."

Renumber accordingly

February 19, 2015

for  
2-19-15  
1004

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, after "reenact" insert "subsection 2 of section 61-16.1-09, section 61-16.1-53.1,"

Page 1, line 1, after "61-21-01" insert a comma

Page 1, line 2, after "to" insert "a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices,"

Page 1, line 2, after "drain" insert a comma

Page 1, after line 5, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated or state funds approved by the legislative assembly for a specific project have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

**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 - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.**

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. The Any aggrieved party may appeal the board's decision may be



appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer, which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also 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 state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating 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 state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination.
3. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:
  1. a. Notify the landowner by certified mail at the landowner's post-office address of record;
  2. b. Return the matter to the jurisdiction of the board along with the investigation report; or
  3. c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other device is not removed within ~~such a~~ reasonable time as determined by the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property of the responsible landowner. The notice from the state engineer 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 state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer 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 are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with under the terms of this section.
6. If the state engineer, 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, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court in the event of on conviction under this statute, the court shall order the dam, dike, or other device removed within such 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 thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners."

Page 1, line 13, remove "The term"

Page 1, line 14, replace "includes" with ""Drain" also means"

Page 1, line 18, remove "- Continuing appropriation"

Page 1, line 24, remove "If a decision is not"

Page 2, remove line 1

Page 2, line 2, remove "within one hundred fifty days of the complaint."

Page 2, line 5, overstrike the third "the" and insert immediately thereafter "all"

Page 2, line 5, overstrike "party" and insert immediately thereafter "parties"

Page 2, line 14, after the first "engineer" insert "within one hundred fifty days of the submittal date of the original complaint"

Page 2, line 31, after the first "the" insert "responsible landowner's"

Page 2, line 31, overstrike "of the landowner responsible"



Page 3, line 10, after "other" insert "property"

Page 3, line 11, overstrike "are"

Page 3, line 11, overstrike "appropriated out of the state"

Page 3, line 12, overstrike "treasury and must be"

Page 3, line 17, replace "6." with "5."

Page 3, line 19, overstrike "shall" and insert immediately thereafter "must"

Page 3, line 19, overstrike "shall" and insert immediately thereafter "must"

Page 3, line 23, replace "7." with "6."

Page 3, line 28, replace "8." with "7."

Renumber accordingly

Date: 1-22-15  
Roll Call Vote #: \_\_\_\_\_

#1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. \_\_\_\_\_

House Energy and Natural Resources Committee

LC 15.8015.01001

☐ Subcommittee  
1095

Recommendation: ☒ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Keiser Seconded By Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Bob Hunsakor		
Vice Chairman Damschen			Rep. Corey Mock		
Rep. Dick Anderson			Rep. Naomi Muscha		
Rep. Roger Brabandt					
Rep. Bill Devlin					
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. George Keiser					
Rep. Mike Lefor					
Rep. Mike Nathe					

Total (Yes) 13 No —

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Amended Bill



Date: 1-22-15  
Roll Call Vote #:

#1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Energy and Natural Resources

Committee

☐ Subcommittee

1095

Recommendation:

☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By

Rep Hofstad

Seconded By

Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Damschen	✓		Rep. Corey Mock	✓	
Rep. Dick Anderson	✓		Rep. Naomi Muscha	✓	
Rep. Roger Brabandt	✓				
Rep. Bill Devlin	✓				
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. George Keiser	✓				
Rep. Mike Lefor	✓				
Rep. Mike Nathe	✗ A				

Total (Yes)

12

No

0

Absent

1

Floor Assignment

Hofstad

If the vote is on an amendment, briefly indicate intent:

Date: 2/19/15  
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1095**

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep Hofstad Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

*Voice Vote*  
*Carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2/19/15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1095

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider Amendment ☐ \_\_\_\_\_

Motion Made By Rep. Devlin Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



Date: 2/19/15  
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1095

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: Proposed amendments from State Water Commission

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Hofstad Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

To, "recapture the grammatical intent of the State Engineer's original prefiled bill."

Date: 2/19/15  
Roll Call Vote #: 4

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1095

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 15.8015.01002

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐

Motion Made By Rep Hofstad Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunskor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	✓				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	A				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Hofstad

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1095: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1095 was placed  
on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 61-16.1-09, section  
61-16.1-53.1,"

Page 1, line 1, after "61-21-01" insert a comma

Page 1, line 2, after "to" insert "a water resource board's eminent domain power,  
administrative hearings for noncomplying dams, dikes, and other devices,"

Page 1, line 2, after "drain" insert a comma

Page 1, after line 5, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North  
Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated or state funds approved by the legislative assembly for a specific project have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

**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 - State engineer review -  
Closing of noncomplying dams, dikes, or other devices for water conservation,  
flood control, regulation, and watershed improvement.**

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



must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also 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 state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of ~~investigating 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 state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be made, either by action against the board, or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.
3. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:
  - 1- a. Notify the landowner by certified mail at the landowner's post-office address of record;
  - 2- b. Return the matter to the jurisdiction of the board along with the investigation report; or
  - 3- c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other device is not removed within ~~such a~~ reasonable time as ~~determined by the state engineer determines~~, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property of the ~~responsible landowner~~. The notice from the state engineer 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 state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer 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 ~~are hereby appropriated out of the state treasury and must be~~ credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court ~~in accordance with~~ under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to ~~such~~ an appeal.

5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision ~~in accordance with~~ under the terms of this section.

6. If the state engineer, 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, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint ~~in accordance with~~ under the statutory responsibilities prescribed in chapter 11-16.

7. In addition to the penalty imposed by the court ~~in the event of an~~ conviction under this statute, the court shall order the dam, dike, or other device removed within ~~such 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 thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners."

Page 1, line 13, remove "The term"

Page 1, line 14, replace "includes" with ""Drain" also means"

Page 1, line 18, remove "~~- Continuing appropriation~~"

Page 1, line 24, remove "~~If a decision is not~~"

Page 2, remove line 1

Page 2, line 2, remove "~~within one hundred fifty days of the complaint.~~"

Page 2, line 5, overstrike the third "the" and insert immediately thereafter "all"

Page 2, line 5, overstrike "party" and insert immediately thereafter "parties"

Page 2, line 14, after the first "engineer" insert "within one hundred fifty days of the submittal date of the original complaint"

Page 2, line 31, after the first "the" insert "responsible landowner's"

Page 2, line 31, overstrike "of the landowner responsible"

Page 3, line 10, after "other" insert "property"

Page 3, line 11, overstrike "are"

Page 3, line 11, overstrike "appropriated out of the state"

Page 3, line 12, overstrike "treasury and must be"

Page 3, line 17, replace "6." with "5."



Page 3, line 19, overstrike "shall" and insert immediately thereafter "must"

Page 3, line 19, overstrike "shall" and insert immediately thereafter "must"

Page 3, line 23, replace "7." with "6."

Page 3, line 28, replace "8." with "7."

Renumber accordingly

**2015 SENATE ENERGY AND NATURAL RESOURCES**

**HB 1095**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1095  
3/19/2015  
25150

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kate Oliver*

### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

2 Attachments

Chairman Schaible opened the public hearing on HB 1095.

John Paczkowski: Chief of the Regulatory Sections of the Office of the State Engineer/State Water Commission. See attachment #1. (:40-3:20)

Senator Triplett: This bill was brought in as a housekeeping bill and the change to section 1 was made in the house and unintendedly opened Pandora's Box?

John Paczkowski: Yes that is correct.

Chairman Schaible: Page 4 of the bill, can you explain the language a little more?

John Paczkowski: What we are trying to shoot for is the only definition in code now and that speaks to physical features. The intent behind that is the act of draining, you can install a drain or you can look at a drain in the field the intent is the action.

Senator Murphy: Could it be that you are reducing the capacity to retain water. It cannot hold as much because there is a drain on it.

John Paczkowski: Others were concerned that it affected existing code as it relates to drainage.

Sean Fredricks: Red River Joint Water Resource Board. See attachment #2. (7:27-13:15)

Senator Triplett: Do you like your word formula better than before the House passed it.

Sean Fredricks: I feel like this clarifies things as it exists today. I guess I would go ahead and amend it to use the new language.

Carey Backstrand: North Dakota Water Resource Districts Association. HB 1090 would have taken quick take away from the bill. Quick take is an important tool in the toolbox; there are some that are necessary to keep things moving. In most cases the products have been voted in. It is important that the tool stays in the toolbox.

Robert Thompson: North Dakota State Water Commission. I opposed the bill unless it is amended with Sean's amendment. We discussed HB 1095 and we could not understand why it was amended in the House. The thing that bothers us is appropriation and not approval; when you say appropriate you approve everything that isn't a line item. We need the quick take on the water resource board, it has worked before. You need to have to delay the projects.

Senator Triplett: We would prefer the way it was before but the amendment changes it from the way it was before. It inserts state agencies.

Jurgen Suhr: Maple River Resource Board. Without eminent domain or quick take it would be dead in the water so to speak.

Pete Hanebutt: North Dakota Farm Bureau. Last line on page 4 we think that needs to be taken out. There are a lot of things that people have discussed. It opens too much opportunity. Drain also means capacity. We would wish you take that out.

Scott Rising: North Dakota Soybean Growers. I am in trouble with this one; I think that I oppose the amendment. The language was added for a very specific purpose: to clarify the intent of the House Appropriations committee. The concept was related to the diversion and the idea was that state money would not be whatever until. I will suggest that we oppose the amendment and venture out and be an overture made

Senator Triplett: Are you in opposition to removing what the House did?

Scott Rising: I believe that the House change as it shows up in the 3000 version of the bill is done on purpose.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1095  
3/26/2015  
25487

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

Kathie Oliver

### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

1 Attachment

Chairman Schaible passed out an amendment for HB 1095. See attachment #1.

Senator Triplett Can you tell us what the unintended consequences might be?

Chairman Schaible: Tiling or any fixed point drainage.

Senator Armstrong made a motion to move the amendment with a second by Senator Laffen.

Senator Murphy: This was a water commission addition, was it not?

Chairman Schaible: My concern with this was it was added to duplicate language but if the language duplicates something that is going to cause an affect we are not sure of that would raise my concern.

Senator Murphy: I was in favor of it because I didn't see all those things hiding there. I am not hung up on it being there I just didn't think it was harmful.

Chairman Schaible: If it not that necessary either way why does it need to be there?

There was no further discussion; roll was taken the motion to adopt amendment passed on a 7-0-0 count.

Senator Murphy: We had a proposal from the attorney with the water resource board. Did we already act on that?

Senate Energy and Natural Resources Committee

HB 1095

03/26/2015

Page 2

There was no further discussion and Chairman Schaible closed the committee work on HB 1095

# 2015 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1095  
3/26/2015  
25493

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kate Oliver*

### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

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Chairman Schaible opened the committee work on HB 1095.

Chairman Schaible: The biggest subsequent change is going from 'appropriated' to 'approved'.

John Paczkowski: State Water Commission. In essence that was the gist of it. The water resource districts obtain funding through the water commission was a cost share rather than an appropriation. The idea was looking for approval, we had discussion with the amendment sponsor and he was comfortable with the language.

Chairman Schaible: This amendment would change the language and then it would add the word 'federal'. Why don't we look at it and then take it up again in the morning?

Chairman Schaible then closed the committee work on HB 1095.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1095  
3/26/2015  
25505

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kate Oliver*

### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

1 Attachment

Chairman Schaible called the committee to order and Senator Murphy handed out his amendment. See attachment #1.

Senator Armstrong then made a motion to adopt the amendment with a second by Senator Murphy there was no further discussion, roll was taken and the amendment passed on a 6-1-0 count.

Senator Armstrong then made a motion for a do pass as amended with a second by Vice Chair Unruh, there was no further discussion, roll was taken and the motion passed on a 7-0-0 count with Chairman Schaible carrying the bill to the floor.

Chairman Schaible then closed the committee work on HB 1095



Schaible Amendments  
PROPOSED AMENDMENTS TO ENGROSSED HB 1095

-Page 4-

1 5. If the state engineer, after completing the investigation required under this section,  
2 decides to return the matter to the board, a complete copy of the investigation report  
3 must be forwarded to the board and it must include the nature and extent of the  
4 noncompliance. Upon having the matter returned to its jurisdiction, the board shall  
5 carry out the state engineer's decision ~~in accordance with~~under the terms of this  
6 section.

7 6. If the state engineer, after completing the investigation required under this section,  
8 decides to forward the dam, dike, or other device complaint to the state's attorney, a  
9 complete copy of the investigation report must also be forwarded, which must include  
10 the nature and extent of the noncompliance. The state's attorney shall prosecute the  
11 complaint ~~in accordance with~~under the statutory responsibilities prescribed in  
12 chapter 11-16.

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

22 **SECTION 3. AMENDMENT.** Subsection 4 of section 61-21-01 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 4. "Drain" means any natural watercourse opened, or proposed to be opened, and  
25 improved for ~~the purpose of~~ drainage and any artificial drains of any nature or  
26 description constructed for ~~such~~the purpose, including dikes and appurtenant works.  
27 This definition may include more than one watercourse or artificial channel constructed  
28 for the aforementioned purpose when the watercourses or channels drain land within a  
29 practical drainage area as determined by the written petition called for in section  
30 61-21-10 and the survey and examination called for in section 61-21-12. "Drain" also  
31 means reducing the capacity of a land feature to retain water.

## PROPOSED AMENDMENTS TO HB 1095

(Senator Murphy)

1 A BILL for an Act to amend and reenact subsection 2 of section 61-16.1-09, section  
2 61-16.1-53.1, subsection 4 of section 61-21-01, and section 61-32-08 of the North  
3 Dakota Century Code, relating to a water resource board's eminent domain power,  
4 administrative hearings for noncomplying dams, dikes, and other devices, the definition  
5 of drain, and administrative hearings for drainage projects.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North  
8 Dakota Century Code is amended and reenacted as follows:

9 2. Exercise the power of eminent domain in the manner provided by title 32 for the  
10 purpose of acquiring and securing any rights, titles, interests, estates, or easements  
11 necessary or proper to carry out the duties imposed by this chapter, and particularly to  
12 acquire the necessary rights in land for the construction of dams, flood control  
13 projects, and other water conservation, distribution, and supply works of any nature  
14 and to permit the flooding of lands, and to secure the right of access to such dams and  
15 other devices and the right of public access to any waters impounded thereby.  
16 Provided, however, that when the interest sought to be acquired is a right of way for  
17 any project authorized in this chapter for which federal ~~funds have been appropriated~~  
18 or state funds ~~approved by the legislative assembly for a specific project~~ have been  
19 ~~appropriated~~, approved by Congress, the legislative assembly, or any federal or state  
20 agency, the district, after making a written offer to purchase the right of way and  
21 depositing the amount of the offer with the clerk of the district court of the county  
22 wherein the right of way is located, may thereupon take immediate possession of the  
23 right of way, as authorized by section 16 of article I of the Constitution of North Dakota.  
24 Within thirty days after notice has been given in writing to the landowner by the clerk of  
25 the district court that a deposit has been made for the taking of a right of way as

March 26, 2015

3/27/15  
JWE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1095

Page 1, line 17, remove "funds have been appropriated"

Page 1, line 18, remove "approved by the legislative assembly for a specific project"

Page 1, line 19, overstrike "appropriated" and insert immediately thereafter "approved by Congress, the legislative assembly, or any federal or state agency"

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain also"

Page 4, remove line 31

Renumber accordingly



Job# 25487

Date: 3/26/2015

Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1095**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

tee AS Stated on  
Sem Schedule - Attachment #1

Action Taken	Move Amendment
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Motion Made By    Senator Armstrong                      Seconded By    Senator Laffen

[illegible]

Total	(Yes)	7	No	0
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Absent 0

## Floor Assignment

If the vote is on an amendment, briefly indicate intent:

The amendment takes out "~~Arise~~" also means reducing the capacity of a land feature to retain water.

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1095**

Senate Energy and Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move Amendment

Motion Made By Senator Armstrong Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett		X
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Page 1, line 17, remove "funds have been appropriated"

Page 1, line 18, remove "approved by the legislative assembly for a specific project."

Page 1, line 19 overstrike "appropriated" and insert immediately thereafter "approved by Congress, the legislative assembly, or any federal or state agency"

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain" "also"

Page 4, remove line 31

Renumber accordingly.

Date: 3/26/2015

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1095, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1095 was placed on the Sixth order on the calendar.

Page 1, line 17, remove "funds have been appropriated"

Page 1, line 18, remove "approved by the legislative assembly for a specific project"

Page 1, line 19, overstrike "appropriated" and insert immediately thereafter "approved by Congress, the legislative assembly, or any federal or state agency"

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain" also"

Page 4, remove line 31

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**HB 1095**



# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1095

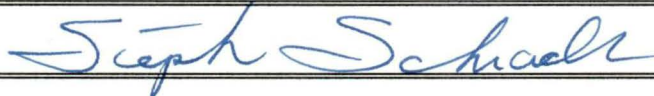
4/8/2015

Job # 25919

☐ Subcommittee

☒ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

Attachments 1

**Rep. Mike Lefor** opens discussion.

**Senator Donald Schaible:** Explains senate amendments; **written attachment #1.**

Page 1 lines 17-19, we struck the language and put approved by congress, legislative assembly, federal and state agencies. To say that money from any government entity should be included; any money given from any government entity. Most of the other stuff was corrections in grammar. The biggest adjustment was on page 5, line 2, the definition of drain; the agriculture people didn't like it so we changed it.

**Rep. Curt Hofstad:** To begin with a little history, in 2009 we added state. The century code says you can have quick take, you can authorize quick take with federal or state funds that have been appropriated. The discussion since then has been who really appropriates state funds. It's been interpreted by water resource districts that those funds have been appropriated. There is some argument that only the state legislature appropriates funds. I think that's part of the contention as to what the bill does and what the language really does. I think we tried to clear that up by making it very clear that only the legislature appropriates funds. I'm wondering now, looking at the language in the Senate version, "any federal or state agency," I'm wondering if an agency like a park board that is using state funds can use quick take to put in a dock or something? I think the language is a little loose and as we go forward we need to have discussions on exactly what our intention is, who we want to give quick take to. I don't know if I'm ready to weigh in on that, I think I would like to have more discussions with water resource boards and the State Engineer's Office to see where that goes and where it should go. Who really appropriates those state funds?

**Senator Donald Schaible:** I don't think it was the Senate's intent to expand quick take to smaller political subdivisions. I think we were trying to clarify the language of federal and state legislative money. So I agree with that.

**Rep. Mike Lefor:** So basically, we're down to page 1 lines 18 and 19, is that correct?

**Senator Philip M. Murphy:** It seems to me that if that is the situation I'd like ask the committee if we could clearly define that it doesn't go down to a political subdivision. I don't know if you would want it in a county or not. It seems like that's where we are, is that what you think?

**Rep. Mike Lefor:** Yes. I would like to have discussions with the water resource agencies and the state engineer's office

**Rep. Curt Hofstad:** It's an important issue, words make a difference as we craft this language it will make a considerable difference when those water resource boards have a quick take. I think 61-16109 is water resource boards. Whether or not they have quick take and who appropriates the funds are all questions we need to answer.

**Senator David Hogue:** I think our question is answered in our constitution; article 1 section 16 grants all political subdivisions quick take authority for taking rights of way. I don't think there is anything the legislature could do to expand or limit that. The operative language in section 16, "when the state or any of its political departments, agencies, or political subdivisions seeks to acquire right of way it may take possession upon making an offer to purchase and depositing the amount of such offer with the clerk of the district court. That's something established by our constitution. I don't think we can change that.

**Rep. Mike Lefor:** I would still like to see us meet with those groups to craft language that is amenable to everyone.

**Rep. Bob Hunsakor:** I agree, I think that Senator David Hogue's thought on section 16 of the constitution is valid and needs to be explored to be sure that it is applied just the way it says. Also, at lower levels, county and below, to avoid problems with landowners being imposed on sooner than they should be, there needs to be discussion with the powers that be. To be sure that quick take is clearly defined; who is going to be involved where does it stop, where does it apply, where doesn't it apply. So it's not subject to interpretation but spelled out exactly.

**Rep. Mike Lefor:** Senator David Hogue your statement is that in the constitution it's for right of way?

**Senator David Hogue:** Nods his head, yes.

**Rep. Mike Lefor:** Would everybody be amenable to having another meeting and in the meantime having some discussions with the water people to get the wording right and in accordance with the constitution?

**Senator Donald Schaible:** That's acceptable with us.

The Representatives agree.

**Rep. Mike Lefor:** Adjourns meeting.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1095  
4/10/2015  
26026

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna Whetham*

### Explanation or reason for introduction of bill/resolution:

Relating to the definition of drain and administrative hearings for drainage projects.

### Minutes:

Attachment # 1.

**Rep. Mike Lefor:** opened the Conference Committee hearing on HB 1095. Does anyone have amendments or discussion on HB 1095?

**Rep. Curt Hofstad:** I have amendments I would like to offer. **I move the Senate recede from the Senate amendments and amend as follows with amendment 15.8015.03004. (See Attachment # 1).**

**Rep. Bob Hunsakor:** Second.

**Rep. Curt Hofstad:** If I can explain the amendments, currently in statute it is somewhat confusing. It states that if money is appropriated either through federal or state funds than that district has the opportunity to use quick take. The question is who appropriates the money and we have had that discussion with the water commission. It is my understanding that we as a Legislative body appropriate money. The State Water commission does not appropriate money, they allocate money. So does the water resource districts have quick take or do they not? We have been wrestling with that issue for a while now. The amendment that you have before you clearly defines that now when the money is appropriated and if the water resource boards want to exercise that quick take that has to rise to an eminent danger of loss of life or property as determined by the State Water commission. So we move that decision to the state water commission for a very high standard.

**Senator David Hogue:** I was reading through the amendment and I thought this would add a lot of grey to an area we want clarity. When would there be an eminent threat of loss of life or property. Eminent means to me that the situation will happen unless we do it right now. I can't imagine that we would be in that situation with these types of projects. I know in Title 37 the Governor has the authority to declare an emergency and can send out the Guard to act in an emergency. I think that is actually covered. I hesitate to support this

amendment because it raises another question to the ultimate question we are trying to answer here whether there should be quick take for these types of projects or not.

**Rep. Curt Hofstad:** To continue that discussion, for example Devils Lake, we gave the state water commission quick take authority when we constructed Devils Lake. Certainly there were several instances when that lake rose where there was eminent danger of loss of life and property. So this Legislative body gave the State Water commission quick take. They do not have quick take, we through this body grant them that and we have done so on three different occasions. One is Devils Lake, Southwest and the other being the Noss project. The state water commission, our arm of this Legislative branch doesn't have quick take unless we give that to them. I looked at that level that the State Water commission would have to determine and set rules for and it could be an issue. I think as we work ourselves through this process we have to find a way to figure out when we want to give our local water resource boards this quick take. Because it does rise to a very high level, it puts that land owner in jeopardy because he no longer has that bargaining authority. Ultimately we need to come to some kind of resolution.

**Rep. Bob Hunsakor:** I've done quite a bit of research across the state of North Dakota, my feeling on this is most have not used quick take yet at this point. But they feel it is very important that it be available to them in case of an emergency. That seems to be the case across a good part of North Dakota, so my concern is that we have a case where there may have been some injustices done. I have a difficult time passing a law that if passed blankets the whole state because of an issue that is isolated. If this is an isolated case, it is the only one I know of. I would want quick take available for the local resource boards.

**Rep. Curt Hofstad:** I think we need to reframe the issue. This particular issue has not been brought to us because of one individual it was brought to us early in the session by the State Water Commission because of ambiguity in the law and who appropriated those dollars, there was ambiguity there. The reason that the legislation was brought forward was to clear that up, not because someone had a problem. I think that needs to be the focus of this discussion.

**Senator Philip M. Murphy:** It seems to me that's what we did and we did get the clarification. That is why the State Water Commission the water resource boards and the water users were comfortable with the language that came out of the Senate. They thought it clarified it.

**Rep. Mike Lefor:** The clerk will take the roll on the amendment proposed by Representative Hofstad to HB 1095.

**A Roll Call Vote was taken. Yes: 2 No: 4 Absent: 0. Motion failed.**

**Rep. Mike Lefor:** What would happen if we stay with current code or adding language that would state, in Line 18 "or appropriated by the State Water Commission" ?

**Senator Donald Schaible:** If this bill does not exist and we stay with current code, then quick take is still available is my understanding even though it might be unclear, it sounds to me that it has been there already. Current practice has been that it has been there now.



The issue is, are we going to allow it for the rural or not? Whether this goes away or not, rather than taking it away I think that would be our preference. I thought that is what the Senate side was trying to do.

**Senator Philip M. Murphy:** I take it that the House would rather vote down this bill than recede from amendment.

**Rep. Curt Hofstad:** I can't speak for the entire House but we will defend our position. Our position is that we believe that those funds have to be appropriated by this Legislative body before that quick take is passed. It is not passed by any government entity or the Water Commission when funds are allocated to a particular project. I think that is a dangerous road that we go down because there is very little vetting process in a Water Commission sponsored project. Unlike a federal project where there is a full blown EIS and there could indeed be a cost benefit analysis, downstream impact surveys, interests sought after that does not happen on a State Water Commission project. They certainly look at the engineering process that goes before the State Water Commission but there is not the same vetting that is done in a federal project. I have a hard time understanding why we had up until 2009 we didn't have an issue or a problem. There are many projects out there that rise to the level of having quick take because they are vitally important. They are huge flood control projects, but a small project and a small water district does not rise to the level of taking somebody's land without due process. I say that loosely because certainly he has due process but he loses his ability to negotiate as he would under eminent domain. I would like to tighten this language up and I would like an opportunity to work this out right here. I would like to work this language out that we can protect the landowner and the water resource board if there is a project that needs to have quick take. It is unreasonable that we give those water resource boards that hammer out there to threaten quick take. That is unconscionable.

**Senator Philip M. Murphy:** I can certainly see where you are coming from and I respect that very much, if the committee decides to work on this I would ask that we would be able to have access to the Water Commission and the Resource Boards as a committee. That is a big deal and it is going to take some input. I don't think it is something I have the expertise to do in half hour meetings. I ask the committee to consider that.

**Senator David Hogue:** I wanted to ask Rep. Hofstad about his amendment that we defeated. Basically what would have triggered that is if the Water Commission would have to make a determination of an eminent threat to loss of life or property. My question would be is there some other amendment we could think about where we gave the water commission the discretionary authority to grant a quick take to the water resource district on some type of project by project basis where the Water Commission would have to make some sort of discretionary finding, short of this eminent loss of life or property. I don't think any of these projects if you looked at what eminent means would ever consider that the threshold is met.

**Rep. Curt Hofstad:** I think that's truly possible. We have to be careful. I don't think the State Water Commission has any appetite for taking every single project that they have and determining whether or not they should grant eminent domain. I certainly would be amenable to Senator Murphy's suggestion of working collaboratively with the State Water

Commission and with a group of water resource boards to craft some kind of language that would work for both groups.

**Rep. Mike Lefor:** That sounds reasonable. We will meet with the Water Commission and have a conference call with some of the water resource boards. Any other discussion on HB 1095? Seeing none. Closed the hearing on HB 1095.

## 2015 HOUSE STANDING COMMITTEE MINUTES

### Energy and Natural Resources Committee

Pioneer Room, State Capitol

HB 1095

4/13/2015

26061

☐ Subcommittee

☒ Conference Committee

Committee Clerk Signature

*Donna Whetnam*

#### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

#### Minutes:

Attachments

**Rep. Mike Lefor:** opens Conference Committee hearing on HB 1095. There have been a lot of ideas around of who should have the arbitrary ability to make a decision, if it would be the State Water Commission or others. Right now my position is and I have just listened to Representative Hofstad and I think it sounds like a good idea that in the interim the Water Topics Board takes a look at this and does further research on it and reports back to the next Legislative Session. That is something that I can feel real comfortable with and I want to know how everyone else feels.

**Senator Donald Schaible:** Yes, looking at some possible solutions and it seems like every time you run into one you find another problem, so it's not a simple fix by any means. I think there are some good avenues to look at and as we delved into them it showed that they are not as simple as they seem so I to agree with that.

**Rep. Curt Hofstad:** I certainly do believe that it's a solution. I would suggest that we adjourn and reschedule the meeting and give ourselves and opportunity to ask the people in the room if there are any other solutions out there. I will look at those and have conversations with people and bring an amendment to the next meeting with that in mind to have the Water Topics Committee assign this particular duty if that would be agreeable with everyone.

**Rep. Mike Lefor:** I agree this is a complex situation and I know I have heard no less than 8 or 10 solutions and every time there is a solution a couple more problems crop up. So I think the best thing to do is doing a study so these groups get more time for input. Maybe then the solution will come up better than we would have thought of. Any other comments? Seeing none. Closed the hearing on HB 1095.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Pioneer Room, State Capitol

HB 1095

4/14/2015

26075

☐ Subcommittee

☒ Conference Committee

Committee Clerk Signature

*Donna Whetham*

### Explanation or reason for introduction of bill/resolution:

Relating to a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects.

### Minutes:

Attachment # 1.

**Rep. Mike Lefor:** opens Conference Committee hearing on HB 1095. Continuing our discussion from yesterday Representative Hofstad asked for a day to consider an amendment.

**Rep. Curt Hofstad:** I have amendment 15.8015.03006 which I ask the Senate to recede from its amendment and further amend as follows. You have the amendment in front of you. (See Attachment # 1). **I move the amendment 15.8015.03006 to HB 1095.**

**Rep. Bob Hunsakor: Second.**

**Rep. Curt Hofstad:** The amendment is working off of amendment .03000 and basically what it does it addresses the "drain" issue that the Senate has taken care of. I think that is an important consideration. I had some issues and some trouble with that on the House side too so the language that the Senate addressed stays with effectively takes out "drain" which also means reducing the capacity of a land feature to retain water. That is gone, as the Senate has taken it out. It really takes this whole quick take issue off the table. It reverts back to statute as we have it now and then we have taken that issue and given it to the Water Topics Overview Committee so that we are to address that and look at that. If you look at the study it says shall assign to the Water Topics Overview Committee. I had asked Council to put it in the duties of the Water Topics Committee, he talked me out of that but they said it is better this way because that is in statute and now we have to go back and rewrite that next session. So it remains as a study that the Water Topics Committee is a statutory committee so that is the explanation.



**Rep. Mike Lefor:** Any further discussion? Hearing none. I will ask the clerk to take the roll on Representative Hofstad motion to have the Senate recede and further amend HB 1095 with amendment 15.8015.03006.

**A Roll Call Vote was taken. Yes: 6 No: 0 Absent: 0. Motion Carried.**

**Rep. Mike Lefor:** Closed the hearing on HB 1095.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1095

That the Senate recede from its amendments as printed on page 1297 of the House Journal and pages 1071 and 1072 of the Senate Journal and that Engrossed House Bill No. 1095 be amended as follows:

Page 1, line 11, overstrike ", and particularly to" and insert immediately thereafter ". A water resource board may"

Page 1, line 14, overstrike ", and to" and insert immediately thereafter ". In addition, a water resource board may"

Page 1, line 14, overstrike "such" and insert immediately thereafter "these"

Page 1, line 15, after "any" insert "impounded"

Page 1, line 15, overstrike "impounded thereby"

Page 1, line 16, overstrike "Provided, however, that when" and insert immediately thereafter "If"

Page 1, line 17, overstrike "any" and insert immediately thereafter "a"

Page 1, line 17, after "appropriated" insert "and designated for the project"

Page 1, line 18, remove "approved by the legislative assembly for the specific project"

Page 1, line 19, after "appropriated" insert "to the state water commission and the commission provides funding for the project for which there is imminent danger of loss of life or property as determined by the state water commission and the use of the following quick take procedure is approved by the state water commission"

Page 1, line 19, overstrike "district" and insert immediately thereafter "board"

Page 1, line 21, overstrike "thereupon"

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain" also"

Page 4, remove line 31

Renumber accordingly

SK  
4/14/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1095

That the Senate recede from its amendments as printed on page 1297 of the House Journal and pages 1071 and 1072 of the Senate Journal and that Engrossed House Bill No. 1095 be amended as follows:

Page 1, line 1, remove "subsection 2 of section 61-16.1-09,"

Page 1, line 3, remove "a water resource board's eminent domain power,"

Page 1, line 5, after "projects" insert "; and to provide for a legislative management study"

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 4

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain" also

Page 4, remove line 31

Page 7, after line 17, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall assign to the water topics overview committee the responsibility of studying the use of quick take in eminent domain by water resource districts. The study must include input from stakeholders, including the state water commission, water resource districts, and landowners. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 4/10/2015  
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

HB1095  
BILL/RESOLUTION NO. "Enter Bill/Resolution No." as (re) engrossed

House "Enter committee name" Committee

- Action Taken ☐ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows  
  
☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep Hofstad Seconded by: Rep HunsKor

Representatives	4/8	4/10	Yes	No	Senators	4/8	4/10	Yes	No
Rep. Mike Lefor		✓	✓		Senator Donald Schaible	✓	✓		✓
Rep. Curt Hofstad		✓	✓		Senator David Hogue	✓	✓		✓
Rep. Bob HunsKor		✓		✓	Senator Philip M. Murphy	✓	✓		✓
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: 2 No: 4 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 15-8015 . 03004 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Amendments prepared for Rep. Hofstad.

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1095 as (re) engrossed

House "Enter committee name" Committee

- Action Taken ☐ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows  
  
☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Hofstad Seconded by: Rep. Hunsakor

Representatives	4/13	4/14		Yes	No		Senators	4/13	4/14		Yes	No
Rep. Mike Lefor	✓	✓		✓			Senator Donald Schaible	✓	✓		✓	
Rep. Curt Hofstad	✓	✓		✓			Senator David Hogue	4	✓		✓	
Rep. Bob Hunsakor	✓	✓		✓			Senator Philip M. Murphy	✓	✓		✓	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier no carrier Senate Carrier no carrier

LC Number 15.8015 . 03006 of amendment

LC Number                      . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Change page 1, 2, 4 & 7 insert  
legislative Management Study after line 17 on Page 7.*



**REPORT OF CONFERENCE COMMITTEE**

**HB 1095, as engrossed:** Your conference committee (Sens. Schaible, Hogue, Murphy and Reps. Lefor, Hofstad, Hunskor) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1297, adopt amendments as follows, and place HB 1095 on the Seventh order:

That the Senate recede from its amendments as printed on page 1297 of the House Journal and pages 1071 and 1072 of the Senate Journal and that Engrossed House Bill No. 1095 be amended as follows:

Page 1, line 1, remove "subsection 2 of section 61-16.1-09,"

Page 1, line 3, remove "a water resource board's eminent domain power,"

Page 1, line 5, after "projects" insert "; and to provide for a legislative management study"

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 4

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove ""Drain" also"

Page 4, remove line 31

Page 7, after line 17, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall assign to the water topics overview committee the responsibility of studying the use of quick take in eminent domain by water resource districts. The study must include input from stakeholders, including the state water commission, water resource districts, and landowners. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Engrossed HB 1095 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**HB 1095**

#1

1

## **TESTIMONY ON HOUSE BILL NO. 1095**

### **House Energy and Natural Resources Committee**

**John Paczkowski, Chief - Regulatory Section  
Office of the State Engineer/State Water Commission**

**January 15, 2015**

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Chief of the Regulatory Section for the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1095, with proposed amendments as attached, which would amend N.D.C.C. §§ 61-21-01(4) and 61-32-08.

The attached proposed amendments to House Bill No. 1095 recapture the grammatical intent of the State Engineer's original prefiled bill.

The amendments to N.D.C.C. § 61-21-01(4) add a second definition to "drain" because the Century Code uses the term to mean both an action and a physical feature.

The amendments to N.D.C.C. § 61-32-08 are also predominately grammatical in content. N.D.C.C. § 61-32-08 does not involve appropriation of any sort; therefore removing "Continuing appropriation" is appropriate. An addition to N.D.C.C. § 61-32-08 is language specifying the timeframe an aggrieved party of a drainage complaint has to submit an appeal to the State Engineer if the water resource board fails to make a decision on the drainage complaint.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 13, replace "The term" with "“Drain” also means"

Page 1, line 14, remove "includes"

Page 1, line 18, remove "- Continuing appropriation"

Page 1, line 24, remove "If a decision is not"

Page 2, remove line 1

Page 2 line 2, remove "within one hundred fifty days of the complaint."

Page 2, line 14, after the first "engineer" insert "within one hundred fifty days of the  
submittal date of the original complaint"

Renumber accordingly

2/19/15

1095

**TESTIMONY ON HOUSE BILL NO. 1095**

**House Energy and Natural Resources Committee**

**John Paczkowski, Chief - Regulatory Section  
Office of the State Engineer/State Water Commission**

**February 19, 2015**

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Chief of the Regulatory Section for the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1095, with proposed amendments as attached, which would amend N.D.C.C. §§ 61-16.1-09(2), 61-16.1-53.1, 61-21-01(4) and 61-32-08.

The attached proposed amendments to House Bill No. 1095 recapture the grammatical intent of the State Engineer's original prefiled bill.

The amendments to N.D.C.C. § 61-16.1-09(2) intends to clarify that a water resource district is only granted quick take authority for a project when it is appropriated federal funds or when the legislative assembly approves funding for a specific project.

The amendments to N.D.C.C. § 61-16.1-53.1 are predominately grammatical in content. An addition to N.D.C.C. § 61-16.1-53.1 is language specifying the timeframe an aggrieved party of a complaint regarding the unauthorized construction of a dam, dike, or other device has to submit an appeal to the State Engineer if the water resource board fails to investigate or make a decision on the unauthorized construction complaint.

The amendments to N.D.C.C. § 61-21-01(4) add a second definition to "drain" because the Century Code uses the term to mean both an action and a physical feature.

The amendments to N.D.C.C. § 61-32-08 are also predominately grammatical in content. N.D.C.C. § 61-32-08 does not involve appropriation of any sort; therefore removing "Continuing appropriation" is appropriate. An addition to N.D.C.C. § 61-32-08 is language specifying the timeframe an aggrieved party of a drainage complaint has to submit an appeal to the State Engineer if the water resource board fails to make a decision on the drainage complaint.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.



#2

2/19/15  
1095

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1095

Page 1, line 1, after "reenact" insert "subsection 2 of section 61-16.1-09, section 61-16.1-53.1,"

Page 1, line 1, after "61-21-01" insert " ,"

Page 1, line 2, after "to" insert "a water resource board's eminent domain power, administrative hearings for noncomplying dams, dikes, and other devices"

Page 1, line 2, after "drain" insert " ,"

Page 1, after line 4, insert:

**SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated or state funds approved by the legislative assembly for a specific project have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

**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 - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.**

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. ~~The Any aggrieved party may appeal the board's decision may be appealed to the state engineer by any aggrieved party.~~ The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer, which must specifically set forth the reason why ~~the appealing party believes~~ the board's decision is erroneous. The appealing party shall also 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 state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint ~~for the purpose of investigating 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 state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be made, either by action against the board, or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.
3. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

  4. a. Notify the landowner by certified mail at the landowner's post-office address of record;
  2. b. Return the matter to the jurisdiction of the board along with the investigation report; or
  3. c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other device is not removed within such a reasonable time as determined by the state engineer determines, but not less than thirty days, the state engineer shall



procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property of ~~the responsible landowner~~. The notice from the state engineer 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 state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer 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 ~~are hereby appropriated out of the state treasury and must be~~ credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court ~~in accordance with~~ under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to ~~such~~ an appeal.

5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision ~~in accordance with~~ under the terms of this section.
6. If the state engineer, 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, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint ~~in accordance with~~ under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court ~~in the event of on~~ conviction under this statute, the court shall order the dam, dike, or other device removed within ~~such 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 ~~thereof~~ against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than

one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

Page 1, line 13, replace "The term" with "“Drain” also means"

Page 1, line 14, remove "includes"

Page 1, line 18, remove "- Continuing appropriation"

Page 1, line 24, remove "If a decision is not"

Page 2, remove line 1

Page 2 line 2, remove "within one hundred fifty days of the complaint."

Page 2, line 5, overstrike the third "the" and insert immediately thereafter "all"

Page 2, line 5, overstrike "party" and insert immediately thereafter "parties"

Page 2, line 14, after the first "engineer" insert "within one hundred fifty days of the submittal date of the original complaint"

Page 2, line 31, after the first "the" insert "responsible landowner's"

Page 2, line 31, overstrike "of the landowner responsible"

Page 3, line 10, after "other" insert "property"

Page 3, line 11, overstrike "are"

Page 3, line 11, overstrike "appropriated out of the state"

Page 3, line 12, overstrike "treasury and must be"

Page 3, line 17, replace 6 with 5

Page 3, line 19, overstrike the first "shall" and insert immediately thereafter "must"

Page 3, line 19, overstrike the second "shall" and insert immediately thereafter "must"

Page 3, line 23, replace 7 with 6

Page 3, line 28, replace 8 with 7

Renumber accordingly



**TESTIMONY ON HOUSE BILL NO. 1095**

*Attachment 1*

**Senate Energy and Natural Resources Committee**

**John Paczkowski, Chief - Regulatory Section  
Office of the State Engineer/State Water Commission**

**March 19, 2015**

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Chief of the Regulatory Section for the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1095, which would amend N.D.C.C. §§ 61-16.1-09(2), 61-16.1-53.1, 61-21-01(4), and 61-32-08.

The amendment to N.D.C.C. § 61-16.1-09(2) was added following discussion with members of the House Energy and Natural Resources Committee on whether a water resource district is granted quick take authority when a project is provided funding by a state agency or when the Legislative Assembly approves funding for a specific project. The State Engineer is aware of the concerns regarding the proposed amendment to N.D.C.C. § 61-16.1-09(2), but hopes that those concerns can be addressed without affecting the other portions of this bill. The State Engineer is supportive of the bill as it provides clarity to this issue, however he is neutral on the outcome of this section.

The amendments to N.D.C.C. § 61-16.1-53.1 are predominately grammatical in content. An addition to N.D.C.C. § 61-16.1-53.1 is language specifying the timeframe an aggrieved party of a complaint regarding the unauthorized construction of a dam, dike, or other device has to submit an appeal to the State Engineer if the water resource board fails to investigate or make a decision on the unauthorized construction complaint.

The amendments to N.D.C.C. § 61-21-01(4) add a second definition to "drain" because the Century Code uses the term to mean both an action and a physical feature.

The amendments to N.D.C.C. § 61-32-08 are also predominately grammatical in content. An addition to N.D.C.C. § 61-32-08 is language specifying the timeframe an aggrieved party of a drainage complaint has to submit an appeal to the State Engineer if the water resource board fails to make a decision on the drainage complaint.

It should be noted that the proposed amendments to N.D.C.C. § 61-16.1-53.1 and N.D.C.C. § 61-32-08 provide consistency between the two pieces of code.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal or state funds have been ~~appropriated~~ approved by Congress, the legislative assembly, or any federal or state agency, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

\* \* \*

3-19-15

Attachment 2

**Testimony by Sean M. Fredricks  
Red River Joint Water Resource District**

**Before the Senate Energy and Natural Resources Committee  
In Opposition to HB 1095**

**North Dakota Legislature  
64th Legislative Assembly  
Bismarck, North Dakota  
March 19, 2015**

Chairman Schaible, members of the Committee, I appreciate the opportunity to testify before you today in opposition to HB 1095. My name is Sean Fredricks, and I work for the Red River Joint Water Resource District and several individual water resource districts ("WRDs") in the State, including several WRDs in rural counties. The amendment to HB 1095 (contained in Section 1) would reverse legislation passed in 2009 and would prevent many important water projects in the State from proceeding. Originally HB 1095 was a "house cleaning" bill introduced at the request of the State Engineer's Office, and WRDs supported the original language. However, Section 1 of this bill is an amendment added immediately prior to crossover, and the bill, with the amendment, was approved on the House floor before WRDs were even aware of the amendment. Section 1 seeks to strip WRDs of their "quick-take" eminent domain authority with some minor (and effectively meaningless) exceptions, a change that would create a substantial roadblock to water projects, especially retention projects, at a time when water development in the State is crucial. WRDs adamantly oppose Section 1 of HB 1095.

### **“Quick-Take”: A Brief Refresher**

“Quick-take” is simply a matter of timing; it does not reduce or eliminate any landowner rights, and does not give WRDs rights to condemn any more property or any additional property rights. “Standard” eminent domain (non-quick-take) does not give public entities the right to possession of condemned property until “the entry of judgment” on the matter. See N.D. Cent. Code § 32-15-29. Entry of judgment does not occur until the conclusion of a trial to determine the value of the property, which, in some cases, can take a year or more, to the detriment of a given project and the landowners who voted for the project.

In a quick-take proceeding, a WRD is simply entitled to *possession* of the right of way once the WRD deposits the appraisal amount with the district court. Landowners have the same rights to challenge the amount of compensation offered by a WRD to purchase the property, and they still have the same rights to challenge the public necessity of the project. In the meantime, the WRD has the legal right to begin construction on its project. Quick-take is about timing; it does not reduce or eliminate landowner rights. The timing is crucial for project development and, ultimately, construction.

### **Section 1 of HB 1095 Would Reverse the Legislature’s Action in 2009**

In 2009, the legislature passed SB 2255, a bill that granted WRDs quick-take authority when the State has approved cost-share to build a water project. The bill passed overwhelmingly in 2009 and the State Engineer’s Office has not offered any example of a situation where a WRD has abused the authority. There is no basis or reason to now overturn the Legislature’s action in 2009.

### **There is no Reason for Section 1 of HB 1095**

To my knowledge, there have been no complaints that WRDs have, in any way, abused their authority or that WRDs are overreaching. Of course, eminent domain is a serious issue and WRDs certainly do not relish the necessity to utilize it, but when constructing an important water project, especially one approved by voters and landowners in a watershed, a WRD may not have any choice. When the landowners and voters have spoken, and a WRD is prepared to construct a water project, the WRD must acquire easements and, more importantly, the WRD must access the right of way to commence construction. The timing of that access can mean everything for a project and the Legislature recognized this fact when you passed SB 2255 in 2009.

Section 1 is a “solution” seeking a problem that simply does not exist. WRDs are landowners and they do not take their eminent domain authority lightly, and they certainly do not abuse their quick-take authority. Section 1 is unnecessary and would ultimately impede efforts to solve water problems in North Dakota.

### **Section 1 - Eliminating WRD Authority, Cloaked as “Clarifying”**

The State Engineer’s Office has suggested Section 1 of HB 1095 is simply an effort to clarify the language of N.D. Cent. Code § 61-16.1-09(2), the provision that grants WRDs their quick-take authority. We have no objection to the concept of clarifying the intent of SB 2255, if this Committee finds clarification would be helpful. However, the State Engineer’s Office’s proposed language in Section 1 of HB 1095 is not clarifying language; instead, the language proposed in Section 1 seeks to overturn the Legislature’s action in 2009. The language in Section 1 is not congruent with the intent of SB 2255, as supported by the legislative history of SB 2255. The legislative history of SB 2255 reveals the intention of the bill was to afford WRDs quick-take authority anytime the State Water Commission approves cost-share for a project.



My own testimony regarding SB 2255, endorsed and introduced by Senator Tom Fischer, the bill's primary sponsor, is evidence of the intent of SB 2255:

**Protecting State Dollars and State Permits**

Water resource districts currently have quick take authority when there are Federal dollars appropriated for a project. SB 2255 only seeks to add quick take authority when there are State funds available for a project. For projects that do not receive Federal or State cost share, water resource districts would not have quick take, and would operate under standard eminent domain procedures. The addition of quick take authority when there are State dollars available will simply protect State cost share dollars and State permits.

Anytime the North Dakota State Water Commission approves cost share dollars for a project, the water resource district must enter into a "Cost Participation Agreement" with the State. Under those agreements, water resource districts must obtain all the necessary right of way for their projects. If a particular landowner will not sell the necessary right of way to a water resource district for a project, and the parties engage in lengthy and expensive condemnation proceedings, State cost share dollars for that project may be in jeopardy.

Typically, the State will put approved cost share dollars on hold until all litigation is complete. In the meantime, the State agreements contain several contingencies that could jeopardize cost share on a project if lengthy litigation is necessary. For example, if a water resource district is engaged in lengthy condemnation litigation, and State funds run short for some reason, the State agreements permit the State to terminate the cost share. From water resource districts' perspectives, the sooner they can have access to property to construct a project, the sooner they receive their State cost share dollars, and the less their cost share dollars will be at risk (and, ultimately, the less local taxpayers will have to pay in assessments to construct a water project).

In addition, the State Engineer's office must approve a construction permit before a water resource district may construct a project. Those permits require completion of construction within two years. If a water resource district must complete a condemnation trial (or worse, multiple condemnation trials) before it can enter upon property to begin construction, its two-year window under its permit may expire. Obtaining quick take authority in situations where State dollars are available will be crucial in protecting State permits.

SB 2255 would allow Water Resource Districts to obtain all necessary right of way in a timely manner to protect State cost share dollars and to comply with construction permits. At the same time, landowners would retain their right to litigate their compensation for their property, and all landowners would be on a level playing field and would all receive comparable compensation.

As the excerpt above from my 2009 testimony demonstrates, the intent of the bill was to afford WRDs quick-take authority upon approval of cost-share from the State Water Commission.

### **Section 1 of HB 1095 Would Render SB 2255 Meaningless**

The State Engineer's Office's language in Section 1 would only grant WRDs "quick-take" authority when the legislative assembly specifically provides state cost-share dollars for a water project, through legislation. As the State Engineer's Office knows, the water community does not seek state cost-share via the legislature; that would create a difficult situation for the legislature where many water project advocates would be knocking down your doors to ask for money. We have a process whereby all water entities come together in the Water Coalition; we work out the funding priorities at the Coalition level; we agree on a proposed budget to request of the Governor's Office and of this Legislature, that includes water project funding; and we advocate for passage of the budget in the Legislature. With that in mind, WRDs simply do not request water project funding through direct legislative action and, therefore, if Section 1 of HB 1095 were to pass, the bill would effectively eliminate WRD "quick-take" authority. This is an important authority WRDs utilize in their efforts to develop and construct water projects.

### **Section 1 of HB 1095 Would Render Voters'/Landowners' Wishes Virtually Meaningless**

WRDs do not have large general funds nor do they have many other mechanisms available to fund and finance water projects. With that in mind, WRDs must ask landowners who would benefit from a project if they support the project enough to vote to assess themselves. Passage of an assessment district under the WRD statutes is not easy and it requires strong local landowner support for a project. Because of the nature of the statutory procedure for creating assessment districts, right of way acquisition is one of the last steps in development of water projects. If Section 1 of HB 1095 passes, there is a very real danger that landowners will vote to support a project via assessment vote, only to have a single hold-out landowner kill the project

following the successful assessment vote. At the very least, without WRD quick-take authority, a holdout landowner could delay a project for years, at the expense of the other landowners who voted for the project; the project costs would increase during the delay and the landowners would still face the same water issues (e.g., flooding). Without quick-take, a WRD cannot access property to commence construction, and that empowerment of unreasonable, hold-out landowners is contrary to the entire voting process.

### **Many Other Entities Possess Quick-Take Authority**

Consider the fact that many other State entities and political subdivisions possess quick-take authority, including the following entities and projects:

1. North Dakota State Water Commission
2. Southwest Pipeline Project
3. Northwest Area Water Supply Project
4. Devils Lake Outlet
5. Water Districts (rural water systems)
6. Counties
7. Cities
8. North Dakota Department of Transportation

These entities and projects have quick take authority *regardless of any Federal or State cost-share*. WRDs have not abused their quick-take authority and have not done anything to suggest passage of SB 2255 in 2009 was somehow a mistake. WRDs simply ask that the Legislature leave in place the quick-take tool when the State approves cost-share so WRDs can construct important water projects, just as the entities and projects above utilize quick-take to construct their important projects. WRDs simply want to maintain their ability to protect their projects when State cost-share dollars are available. Section 1 of HB 1095 will eliminate that authority, and it will once again allow project opponents to hold projects hostage, to the significant detriment of landowners who support the projects enough to vote to tax themselves.

**Do Not Pass on HB 1095**

North Dakota faces significant challenges regarding water resource development and, fortunately, the Legislature was proactive in 2009 and granted WRDs the authority they need to construct meaningful projects. Section 1 of HB 1095 would reverse that positive momentum and would embolden opponents of water projects who seek to prevent water development. The water community has heard the calls for retention to reduce our State's flooding problems; if Section 1 of HB 1095 passes, I can assure you we will see even less retention in North Dakota.

We strongly oppose Section 1 of HB 1095, and we respectfully urge a Do Not Pass on HB 1095.

Thank you for your consideration.

2.8



PROPOSED AMENDMENTS TO ENGROSSED HB 1095

-Page 4-

1 5. If the state engineer, after completing the investigation required under this section,  
2 decides to return the matter to the board, a complete copy of the investigation report  
3 must be forwarded to the board and it must include the nature and extent of the  
4 noncompliance. Upon having the matter returned to its jurisdiction, the board shall  
5 carry out the state engineer's decision ~~in accordance with~~ under the terms of this  
6 section.

7 6. If the state engineer, after completing the investigation required under this section,  
8 decides to forward the dam, dike, or other device complaint to the state's attorney, a  
9 complete copy of the investigation report must also be forwarded, which must include  
10 the nature and extent of the noncompliance. The state's attorney shall prosecute the  
11 complaint ~~in accordance with~~ under the statutory responsibilities prescribed in  
12 chapter 11-16.

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

22 **SECTION 3. AMENDMENT.** Subsection 4 of section 61-21-01 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 4. "Drain" means any natural watercourse opened, or proposed to be opened, and  
25 improved for ~~the purpose of~~ drainage and any artificial drains of any nature or  
26 description constructed for ~~such the~~ the purpose, including dikes and appurtenant works.  
27 This definition may include more than one watercourse or artificial channel constructed  
28 for the aforementioned purpose when the watercourses or channels drain land within a  
29 practical drainage area as determined by the written petition called for in section  
30 61-21-10 and the survey and examination called for in section 61-21-12. "Drain" also  
31 means reducing the capacity of a land feature to retain water.

Attachment 1  
HB 1095  
Sen Schaefer  
3/26/15



**PROPOSED AMENDMENTS TO HB 1095**

(Senator Murphy)

1 A BILL for an Act to amend and reenact subsection 2 of section 61-16.1-09, section  
2 61-16.1-53.1, subsection 4 of section 61-21-01, and section 61-32-08 of the North  
3 Dakota Century Code, relating to a water resource board's eminent domain power,  
4 administrative hearings for noncomplying dams, dikes, and other devices, the definition  
5 of drain, and administrative hearings for drainage projects.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North  
8 Dakota Century Code is amended and reenacted as follows:

9 2. Exercise the power of eminent domain in the manner provided by title 32 for the  
10 purpose of acquiring and securing any rights, titles, interests, estates, or easements  
11 necessary or proper to carry out the duties imposed by this chapter, and particularly to  
12 acquire the necessary rights in land for the construction of dams, flood control  
13 projects, and other water conservation, distribution, and supply works of any nature  
14 and to permit the flooding of lands, and to secure the right of access to such dams and  
15 other devices and the right of public access to any waters impounded thereby.  
16 Provided, however, that when the interest sought to be acquired is a right of way for  
17 any project authorized in this chapter for which federal ~~funds have been appropriated~~  
18 or state funds ~~approved by the legislative assembly for a specific project~~ have been  
19 ~~appropriated~~, approved by Congress, the legislative assembly, or any federal or state  
20 agency, the district, after making a written offer to purchase the right of way and  
21 depositing the amount of the offer with the clerk of the district court of the county  
22 wherein the right of way is located, may thereupon take immediate possession of the  
23 right of way, as authorized by section 16 of article I of the Constitution of North Dakota.  
24 Within thirty days after notice has been given in writing to the landowner by the clerk of  
25 the district court that a deposit has been made for the taking of a right of way as

Attachment 1  
3/26/15

15.8015.04000

Sixty-fourth  
Legislative Assembly  
of North Dakota

#1  
Apr 8, 2015

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1095**

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to amend and reenact subsection 2 of section 61-16.1-09, section  
2 61-16.1-53.1, subsection 4 of section 61-21-01, and section 61-32-08 of the North Dakota  
3 Century Code, relating to a water resource board's eminent domain power, administrative  
4 hearings for noncomplying dams, dikes, and other devices, the definition of drain, and  
5 administrative hearings for drainage projects.

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12 acquire the necessary rights in land for the construction of dams, flood control  
13 projects, and other water conservation, distribution, and supply works of any nature  
14 and to permit the flooding of lands, and to secure the right of access to such dams and  
15 other devices and the right of public access to any waters impounded thereby.  
16 Provided, however, that when the interest sought to be acquired is a right of way for  
17 any project authorized in this chapter for which federal or state funds have been  
18 ~~appropriated~~approved by Congress, the legislative assembly, or any federal or state  
19 agency, the district, after making a written offer to purchase the right of way and  
20 depositing the amount of the offer with the clerk of the district court of the county  
21 wherein the right of way is located, may thereupon take immediate possession of the  
22 right of way, as authorized by section 16 of article I of the Constitution of North Dakota.  
23 Within thirty days after notice has been given in writing to the landowner by the clerk of  
24 the district court that a deposit has been made for the taking of a right of way as



#1  
4/8/15

1 authorized in this subsection, the owner of the property taken may appeal to the  
2 district court by serving a notice of appeal upon the acquiring agency, and the matter  
3 must be tried at the next regular or special term of court with a jury unless a jury be  
4 waived, in the manner prescribed for trials under chapter 32-15.

5 **SECTION 2. AMENDMENT.** Section 61-16.1-53.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of**  
8 **noncomplying dams, dikes, or other devices for water conservation, flood control,**  
9 **regulation, and watershed improvement.**

10 1. The board shall make the decision required by section 61-16.1-53 within a reasonable  
11 time, not exceeding one hundred twenty days, after receiving the complaint. The board  
12 shall notify all parties of its decision by certified mail. ~~The~~Any aggrieved party may  
13 appeal the board's decision ~~may be appealed to the state engineer by any aggrieved~~  
14 ~~party.~~ The appeal to the state engineer must be made within thirty days from the date  
15 notice of the board's decision has been received. The appeal must be made by  
16 submitting a written notice to the state engineer, which must specifically set forth the  
17 reason why ~~the appealing party~~ believes the board's decision is erroneous. The  
18 appealing party shall also submit copies of the written appeal notice to the board and  
19 to all nonappealing parties. Upon receipt of this notice the board, if it has ordered  
20 removal of a dam, dike, or other device, is relieved of its obligation to procure the  
21 removal of the dam, dike, or other device. The state engineer shall handle the appeal  
22 by conducting an independent investigation and making an independent determination  
23 of the matter. The state engineer may enter property affected by the complaint ~~for the~~  
24 ~~purpose of investigating to~~ investigate the complaint.

25 2. If the board fails to investigate and make a determination concerning the complaint  
26 within a reasonable time, not exceeding one hundred twenty days, the person filing the  
27 complaint may file the complaint with the state engineer within one hundred fifty days  
28 of the submittal date of the original complaint. The state engineer shall, without  
29 reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be  
30 made, either by action against the board, or by ~~personally~~ conducting the investigation  
31 and ~~personally~~ making the determination.

- 1        3.    If the state engineer determines that a dam, dike, or other device has been  
2            constructed or established by a landowner or tenant contrary to title 61 or any rules  
3            adopted by the board, the state engineer shall take one of these three actions:
- 4        1- a.    Notify the landowner by certified mail at the landowner's post-office address of  
5            record;
- 6        2- b.    Return the matter to the jurisdiction of the board along with the investigation  
7            report; or
- 8        3- c.    Forward the dam, dike, or other device complaint and investigation report to the  
9            state's attorney.
- 10       4.    If the state engineer decides to notify the landowner, the notice must specify the  
11           nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other  
12           device is not removed within ~~such a~~ reasonable time as determined by the state  
13           engineer ~~determines~~, but not less than thirty days, the state engineer shall procure the  
14           removal of the dam, dike, or other device and assess the cost of removal against the  
15           responsible landowner's property ~~of the responsible landowner~~. The notice from the  
16           state engineer must state that, within fifteen days of the date the notice is mailed, the  
17           affected landowner may demand, in writing, a hearing on the matter. Upon receipt of  
18           the demand, the state engineer shall set a hearing date within fifteen days from the  
19           date the demand is received. If, in the opinion of the state engineer, more than one  
20           landowner or tenant has been responsible, the costs may be assessed on a pro rata  
21           basis in proportion to the responsibility of the landowners. Upon assessment of costs,  
22           the state engineer shall certify the assessment to the county auditor of the county  
23           where the noncomplying dam, dike, or other device is located. The county auditor shall  
24           extend the assessment against the property assessed. Each assessment must be  
25           collected and paid as other property taxes are collected and paid. Assessments  
26           collected must be deposited with the state treasurer and ~~are hereby appropriated out~~  
27           ~~of the state treasury and must be~~ credited to the contract fund established by section  
28           61-02-64.1. Any person aggrieved by action of the state engineer under this section  
29           may appeal the decision of the state engineer to the district court ~~in accordance~~  
30           ~~with~~ under chapter 28-32. A hearing by the state engineer as provided for in this  
31           section is a prerequisite to ~~such~~ an appeal.



Sixty-fourth  
Legislative Assembly

1       5. If the state engineer, after completing the investigation required under this section,  
2       decides to return the matter to the board, a complete copy of the investigation report  
3       must be forwarded to the board and it must include the nature and extent of the  
4       noncompliance. Upon having the matter returned to its jurisdiction, the board shall  
5       carry out the state engineer's decision ~~in accordance with~~under the terms of this  
6       section.

7       6. If the state engineer, after completing the investigation required under this section,  
8       decides to forward the dam, dike, or other device complaint to the state's attorney, a  
9       complete copy of the investigation report must also be forwarded, which must include  
10      the nature and extent of the noncompliance. The state's attorney shall prosecute the  
11      complaint ~~in accordance with~~under the statutory responsibilities prescribed in  
12      chapter 11-16.

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

22      **SECTION 3. AMENDMENT.** Subsection 4 of section 61-21-01 of the North Dakota Century  
23      Code is amended and reenacted as follows:

24      4. "Drain" means any natural watercourse opened, or proposed to be opened, and  
25      improved for ~~the purpose of~~ drainage and any artificial drains of any nature or  
26      description constructed for ~~such~~that purpose, including dikes and appurtenant works.  
27      This definition may include more than one watercourse or artificial channel constructed  
28      for the aforementioned purpose when the watercourses or channels drain land within a  
29      practical drainage area as determined by the written petition called for in section  
30      61-21-10 and the survey and examination called for in section 61-21-12.



1       **SECTION 4. AMENDMENT.** Section 61-32-08 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **61-32-08. Appeal of board decisions - State engineer review - Closing of**  
4 **noncomplying drains.**

5       1. The board shall make the decision required by section 61-32-07 within a reasonable  
6 time, but not to exceed one hundred twenty days, after receiving the complaint. The  
7 board shall notify all parties of its decision by certified mail. ~~The~~ Any aggrieved party  
8 may appeal the board's decision ~~may be appealed to the state engineer by any~~  
9 ~~aggrieved party.~~ The appeal to the state engineer must be made within thirty days  
10 from the date notice of the board's decision has been received. The appeal must be  
11 made by submitting a written notice to the state engineer, which must specifically set  
12 forth the reason why the board's decision is erroneous. The appealing party shall also  
13 submit copies of the written appeal notice to the board and to ~~the~~ all nonappealing  
14 ~~party~~ parties. Upon receipt of this notice the board, if it has ordered closure of a drain,  
15 lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the  
16 drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting  
17 an independent investigation and making an independent determination of the matter.  
18 The state engineer may enter property affected by the complaint ~~for the purpose of~~  
19 ~~investigating to~~ investigate the complaint.

20       2. If the board fails to investigate and make a determination concerning the complaint  
21 within a reasonable time, but not to exceed one hundred twenty days, the person filing  
22 the complaint may file ~~such~~ the complaint with the state engineer within one hundred  
23 fifty days of the submittal date of the original complaint. The state engineer shall,  
24 without reference to chapter 28-32, cause the investigation and determination to be  
25 made, either by action against the board, or by ~~personally~~ conducting the investigation  
26 and ~~personally~~ making the determination.

27       3. If the state engineer determines that a drain, lateral drain, or ditch has been opened or  
28 established by a landowner or tenant contrary to title 61 or any rules adopted by the  
29 board, the state engineer shall take one of three actions:

30       4. a. Notify the landowner by certified mail at the landowner's post-office address of  
31 record;

#1  
4/8/15

Sixty-fourth  
Legislative Assembly

- 1       2- b. Return the matter to the jurisdiction of the board along with the investigation  
2               report; or
- 3       3- c. Forward the drainage complaint and investigation report to the state's attorney.
- 4       4. If the state engineer decides to notify the landowner, the notice must specify the  
5               nature and extent of the noncompliance and must state that if the drain, lateral drain,  
6               or ditch is not closed or filled within ~~such a~~ reasonable time as determined by the state  
7               engineer ~~shall determine~~, but not less than thirty days, the state engineer shall procure  
8               the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof,  
9               against the responsible landowner's property ~~of the landowner responsible~~. The notice  
10              from the state engineer must state that the affected landowner may, within fifteen days  
11              of the date the notice is mailed, demand; in writing; a hearing on the matter. Upon  
12              receipt of the demand, the state engineer shall set a hearing date within fifteen days  
13              from the date the demand is received. If, in the opinion of the state engineer, more  
14              than one landowner or tenant has been responsible, the costs may be assessed on a  
15              pro rata basis in proportion to the responsibility of the landowners. Upon assessment  
16              of costs, the state engineer shall certify the assessment to the county auditor of the  
17              county where the noncomplying drain, lateral drain, or ditch is located. The county  
18              auditor shall extend the assessment against the property assessed. Each assessment  
19              must be collected and paid as other property taxes are collected and paid.  
20              Assessments collected must be deposited with the state treasurer and ~~are hereby~~  
21              ~~appropriated out of the state treasury and must be~~ credited to the contract fund  
22              established by section 61-02-64.1. Any person aggrieved by action of the state  
23              engineer under the provisions of this section may appeal the decision of the state  
24              engineer to the district court ~~in accordance with~~under chapter 28-32. A hearing by the  
25              state engineer as provided for in this section ~~shall be~~is a prerequisite to ~~such an~~  
26              appeal.
- 27       5. If the state engineer, after completing the investigation required under this section,  
28              decides to return the matter to the board, a complete copy of the investigation report  
29              ~~shall~~must be forwarded to the board and it ~~shall~~must include the nature and extent of  
30              the noncompliance. Upon having the matter returned to its jurisdiction, the board shall

#1  
4/8/15

Sixty-fourth  
Legislative Assembly

1 carry out the state engineer's decision ~~in accordance with~~under the terms of this  
2 section.

3 6. If the state engineer, after completing the investigation required under this section,  
4 decides to forward the drainage complaint to the state's attorney, a complete copy of  
5 the investigation report must also be forwarded, which must include the nature and  
6 extent of the noncompliance. The state's attorney shall prosecute the complaint ~~in~~  
7 ~~accordance with~~under the statutory responsibilities prescribed in chapter 11-16.

8 7. In addition to the penalty imposed by the court ~~in the event of~~on conviction under this  
9 statute, the court shall order the drain, lateral drain, or ditch closed or filled within  
10 ~~such a~~ reasonable time period as the court determines, but not less than thirty days. If  
11 the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the  
12 court, the court shall procure the closing or filling of the drain, lateral drain, or ditch,  
13 and assess the cost ~~thereof~~ against the property of the landowner responsible, in the  
14 same manner as other assessments under chapter 61-16.1 are levied. If, in the  
15 opinion of the court, more than one landowner or tenant has been responsible, the  
16 costs may be assessed on a pro rata basis in proportion to the responsibility of the  
17 landowners.



# 1  
HB 1095  
4/10/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1095

That the Senate recede from its amendments as printed on page 1297 of the House Journal and pages 1071 and 1072 of the Senate Journal and that Engrossed House Bill No. 1095 be amended as follows:

Page 1, line 11, overstrike ", and particularly to" and insert immediately thereafter "A water resource board may"

Page 1, line 14, overstrike ", and to" and insert immediately thereafter "In addition, a water resource board may"

Page 1, line 14, overstrike "such" and insert immediately thereafter "these"

Page 1, line 15, after "any" insert "impounded"

Page 1, line 15, overstrike "impounded thereby"

Page 1, line 16, overstrike "Provided, however, that when" and insert immediately thereafter "If"

Page 1, line 17, overstrike "any" and insert immediately thereafter "a"

Page 1, line 17, after "appropriated" insert "and designated for the project"

Page 1, line 18, remove "approved by the legislative assembly for the specific project"

Page 1, line 19, after "appropriated" insert "to the state water commission and the commission provides funding for the project for which there is imminent danger of loss of life or property as determined by the state water commission and the use of the following quick take procedure is approved by the state water commission"

Page 1, line 19, overstrike "district" and insert immediately thereafter "board"

Page 1, line 21, overstrike "thereupon"

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain also"

Page 4, remove line 31

Renumber accordingly



15.8015.03006  
Title.

Prepared by the Legislative Council staff for  
Representative Hofstad  
April 13, 2015

#1 Apr. 14, 2015  
HB 109.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1095

That the Senate recede from its amendments as printed on page 1297 of the House Journal and pages 1071 and 1072 of the Senate Journal and that Engrossed House Bill No. 1095 be amended as follows:

Page 1, line 1, remove "subsection 2 of section 61-16.1-09,"

Page 1, line 3, remove "a water resource board's eminent domain power,"

Page 1, line 5, after "projects" insert "; and to provide for a legislative management study"

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 4

Page 4, line 26, replace "the" with "that"

Page 4, line 30, remove "Drain also"

Page 4, remove line 31

Page 7, after line 17, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall assign to the water topics overview committee the responsibility to study the use of quick take in eminent domain by water resource districts. The study must include input from stakeholders, including the state water commission, water resource districts, and landowners. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly