

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

SB 2036

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2036
1/20/2023

A bill for an act relating to water resource boards, relating to water resource boards and procedures for assessment projects undertaken by water resource boards; and relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

9:00 AM Chairman Luick called the meeting to order.
Senators Luick Myrdal, Lemm, Weber, Weston and Hogan present.

Discussion Topics:

- Water related definitions
- Regulatory oversight
- Water and drainage laws
- Combined processes
- Committee action

9:00 AM Chairman Luick introduced SB 2036.

9:02 AM Austin Gunderson, Attorney, Legislative Council testified neutral on SB 2036.
#14763

9:20 AM Jack Dwyer, Executive Secretary, North Dakota Water Districts Association, testified in favor of SB 2036. # 14723

9:21 AM Phil Murphy, North Dakota Soybean Growers Association, testified in favor of SB 2036. (verbal)

9:22 AM Harrison Weber, Executive Director of the Red River Valley Sugar Beet Association, testified in favor of SB 2036. (verbal)

9:23 AM Leon Molberg, Landowner, Dickinson, North Dakota, testified in favor of SB 2036. (verbal)

9:26 AM Matt Lindsay, Engineering and Permitting Section Manager, North Dakota Department of Water Resources, testified in favor of SB 2036. # 14409, #14407, #14408

9:39 AM Jack Dwyer, Executive Director, North Dakota Water Districts Association, answered questions of the committee.

9:43 AM Senator Myrdal moved to AMEND SB 2036 (LC 23.0024.03001)

9:43 AM Senator Weston seconded to AMEND SB 2036

9:49 AM Roll call vote.

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion Passed 6-0-0 – ADOPT THE AMENDMENT SB 2036

9:49 AM Senator Myrdal moved DO PASS AS AMENDED SB 2036.

9:49 AM Senator Weber seconded.

9:50 AM Roll Call Vote.

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	Y

Motion Passed 6-0-0. DO PASS AS AMENDED SB 2036.

Chairman Luick will carry.

Additional Written Testimony:

Matt Perdue, ND Farmers Union testified in support #14737

Clifford Issendorf, Board Chair, Bottineau County Water Resource District, testified neutral #14666

Gary Heintz, Resident, Chasely, ND, testified neutral #14558.

9:51 AM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

AK
1-20-23
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2036

Page 1, after line 5 insert "and"

Page 1, line 6, remove ", and subsection 3 of section 61-32-03.2"

Page 2, line 3, replace "waterway" with "watercourse"

Page 2, line 8, replace "waterway" with "watercourse"

Page 2, line 8, overstrike "state water commission" and insert immediately thereafter
"department of water resources"

Page 2, line 12, replace "waterway" with "watercourse"

Page 2, line 16, after "such" insert "the"

Page 2, line 16, remove the overstrike over "watercourse"

Page 2, line 16, remove the second "the"

Page 2, line 17, remove "waterway"

Page 2, line 18, after "such" insert "the"

Page 2, line 18, remove the overstrike over "watercourse"

Page 2, line 18, remove "the waterway"

Page 33, remove lines 1 through 12

Re-number accordingly

REPORT OF STANDING COMMITTEE

SB 2036: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2036 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, after line 5 insert "and"

Page 1, line 6, remove ", and subsection 3 of section 61-32-03.2"

Page 2, line 3, replace "waterway" with "watercourse"

Page 2, line 8, replace "waterway" with "watercourse"

Page 2, line 8, overstrike "state water commission" and insert immediately thereafter "department of water resources"

Page 2, line 12, replace "waterway" with "watercourse"

Page 2, line 16, after "~~such~~" insert "the"

Page 2, line 16, remove the overstrike over "~~watercourse~~"

Page 2, line 16, remove the second "the"

Page 2, line 17, remove "waterway"

Page 2, line 18, after "~~such~~" insert "the"

Page 2, line 18, remove the overstrike over "~~watercourse~~"

Page 2, line 18, remove "the waterway"

Page 33, remove lines 1 through 12

Renumber accordingly

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2036

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2036
3/2/2023

Relating to water resource boards and procedures for assessment projects undertaken by water resource boards; relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

9:28 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Rep Kasper.

Discussion Topics:

- Assessment splits
- Maintenance costs
- Replacements and upgrades
- Definitions
- Investigating and removing obstructions
- Entering landowners property
- Irrigation districts
- Authority
- Right of way easements
- Benefits determination
- Petition costs
- Notification process
- Voting and voting results
- Bridges

Sen Larry Luick, District 25, introduced SB 2036, oral testimony
Jack Dwyer, Executive Secretary, ND Water Resource Districts Association, Testimony 21649

Austin Gunderson, Legislative Council, oral testimony

Matt Lindsay, Engineering & Permitting Section Manager of the Department of Water Resources, Testimony 21634

Additional written testimony:

Phil Murphy, ND Soybean Growers Association, Testimony 21604

Matt Perdue, ND Farmers Union, Testimony 21662

10:15 AM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2036
3/30/2023

Relating to water resource boards; relating to water resource boards and procedures for assessment projects undertaken by water resource boards; relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

10:02 AM Chairman Porter opened the meeting.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Roers Jones, and Ruby.
Absent: Representative Olson

Discussion Topics:

- Water Resource Board investments
- Natural obstruction remedies
- Committee action

Rep Hagert, Testimony 27055, 27057, 27081

Rep Hagert moved Amendment 23.0024.04002 (Testimony 27055), seconded by Rep Dockter. **Voice vote, motion carried.**

Rep Hagert moved a Do Pass as Amended on SB 2036, seconded by Rep Anderson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

13-0-1 Motion carried. Rep Hagert is carrier.

10:13 AM Meeting adjourned.

Kathleen Davis, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2036

Page 1, line 1, replace "thirteen" with "twelve"

Page 1, line 2, after "sections" insert "21-06-07,"

Page 1, line 3, remove "61-01-23,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

21-06-07. Political subdivisions may invest funds.

1. Counties, cities, school districts, park districts, water resource boards, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
 - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
 - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
 - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
 - d. Certificates of deposit, savings deposits, or other deposits fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate deposit placement service as determined by the commissioner of financial institutions.
 - e. State and local securities:
 - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.
 - (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
 - (3) Any security that is a general obligation of a school district and is rated in the highest two categories by a nationally recognized rating agency.
 - (4) Obligations of this state and general obligations of its political subdivisions.

AG
3-30-23
(1-3)

- f. Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

AGC
3-30-23
(2-3)

Page 2, remove lines 1 through 23

Page 3, line 17, after "3." insert "Benefited property" means property that has accrued a benefit from a project.

4. "Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.

5."

Page 3, line 20, replace "4." with "6."

Page 3, line 21, replace "5." with "7."

Page 3, line 23, replace "6." with "8."

Page 3, line 31, replace "7." with "9."

Page 4, line 1, replace "8." with "10."

Page 4, line 6, replace "9." with "11."

Page 4, line 8, replace "10." with "12."

Page 4, line 11, replace "11." with "13."

Page 4, line 13, replace "12." with "14."

Page 4, line 18, replace "13." with "15."

Page 20, after line 26, insert:

- "3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation. Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section."

Page 24, line 20, remove "water resource board, and the"

Page 24, line 21, replace "necessary expense must be deemed a part of the cost of maintenance" with "county or township and all necessary maintenance expenses must be borne forty percent by the county and sixty percent by the water resource board"

- Page 24, line 22, after the third "the" insert "highway authority and the"
- Page 24, line 23, remove "denies a request for maintenance submitted by the county or"
- Page 24, line 24, replace "township, the county or township" with "cannot agree on the necessity or proper methodology for maintaining the bridge or culvert, the requesting party"
- Page 26, line 3, remove the overstrike over "a"
- Page 26, line 3, remove "an artificial"
- Page 26, line 4, after the first "the" insert "result of a natural occurrence, such as sedimentation or vegetation, or by the"
- Page 26, line 30, after the second "a" insert "natural or artificial"
- Page 26, line 30, remove the overstrike over "a"
- Page 26, line 31, remove the overstrike over "watercourse, as defined by section 61-01-06, or"
- Page 26, line 31, remove the overstrike over "including if the"
- Page 27, line 1, remove the overstrike over "watercourse or"
- Page 27, line 1, remove "whether or not the artificial"
- Page 27, line 2, remove the overstrike over "watercourse or"
- Page 27, remove lines 22 through 30
- Page 28, remove lines 1 and 2
- Renumber accordingly

AG
3-30-23
(3-3)

REPORT OF STANDING COMMITTEE

SB 2036, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2036 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "thirteen" with "twelve"

Page 1, line 2, after "sections" insert "21-06-07,"

Page 1, line 3, remove "61-01-23,"

Page 1, after line 11, insert:

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 - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
 - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
 - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
 - d. Certificates of deposit, savings deposits, or other deposits fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate deposit placement service as determined by the commissioner of financial institutions.
 - e. State and local securities:
 - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.
 - (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
 - (3) Any security that is a general obligation of a school district and is rated in the highest two categories by a nationally recognized rating agency.
 - (4) Obligations of this state and general obligations of its political subdivisions.
 - f. Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.

2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

Page 2, remove lines 1 through 23

Page 3, line 17, after "3." insert "Benefited property" means property that has accrued a benefit from a project.

4. Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.

5."

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Page 20, after line 26, insert:

3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation. Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section.

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Page 26, line 3, remove the overstrike over "a"

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Page 26, line 4, after the first "the" insert "result of a natural occurrence, such as sedimentation or vegetation, or by the"

Page 26, line 30, after the second "a" insert "natural or artificial"

Page 26, line 30, remove the overstrike over "a"

Page 26, line 31, remove the overstrike over "~~watercourse, as defined by section 61-01-06, or~~"

Page 26, line 31, remove the overstrike over "~~including if the~~"

Page 27, line 1, remove the overstrike over "~~watercourse or~~"

Page 27, line 1, remove "whether or not the artificial"

Page 27, line 2, remove the overstrike over "~~watercourse or~~"

Page 27, remove lines 22 through 30

Page 28, remove lines 1 and 2

Renumber accordingly

TESTIMONY

SB 2036

Comments

Bill Drafts 23.0024.03000 and 23.0025.03000 - Department of Water Resources

Interim Water Drainage Committee

Representative Luick, Chairman

August 23, 2022

The Department of Water Resources (DWR) has prepared these comments at the request of the committee chairmen and staff. These comments are narrowly focused on the draft bill documents as presented in versions 23.0024.03000 and 23.0025.03000. These comments do not represent an official DWR position at this time but are offered from the context of technical expertise and application as discussions by the committee continue.

23.0024.03000:

1. General Comments

- a. No definition of Benefit
- b. No Benefit Methodology or procedure like Section 6 bill draft 23.0025.02000. References 61-16-1.18 but this section does not define the process as it does in 23-0025.0300 or 23-0145.0100
- c. While not proposed to be changed from version 1000 to version 2000, the DWR submits the following regarding the Assessment Appeal to DWR process in N.D.C.C. § 61-16.1-23 (Section 15):
 - i. The process is currently inconsistent with other DWR appeal dispensations (please see enclosed appeal chart).
 - ii. "May" gives DWR leeway, but perhaps there should be additional options to address appeals, like those options available in the drainage and dam, dike or other device complaint appeal actions in N.D.C.C. §§ 61-32-08 and 61-16.1-53.1, respectively.

2. Section 1

- a. Added DWR recommended definition of Waterway.

3. Section 2

- a. The reference of "State Water Commission" on page 2, after the creation of the Department of Water Resources, may be worth reviewing on intent. Typically, the State Water Commission has financial obligations and Department of Water Resources carries the regulatory responsibilities.
- b. The obstruction process here conflicts with the process in 61-16.1-51.

- c. This section could just speak to general authorities rather than the specific process and let N.D.C.C. § 61-16.1-51 (section 23 of this draft) carry the obstruction process. If considered, changing “watercourse” in section 23 to “waterway” may help make clear the WRD’s jurisdictional authority.
- d. As proposed results in two different ways Obstructions are handled, with 61-01-23 addressing obstructions to “waterways” with heavy SWC and WRD involvement based on a landowner “request” and 61-16.1-51 following the typical “complaint” process.

4. Section 4 – page 3 – lines 15 – 17 – Cleaning out drain

- a. This seems to be a copy and paste from N.D.C.C. ch. 61-21, but it continues to combine maintenance and modification in one definition.
- b. This differs from SWC cost-share and DWR drain permitting.
- c. It should define “repair” and would suggest something that accounts for original design and functional intent. Project owners should be able to repair drains to original design or address minor defects in function from the original design, but deepening and widening and big changes to side slopes is not a repair but a modification.
- d. To aid in code clarity, specific definitions for “Maintenance”, “Repair”, and “Modification” need to be provided.
 - i. On September 1, 2020, the ND Attorney General issued Opinion 2020-L-04 regarding several questions from Senator Rich Wardner regarding assessment drains, including review of definitions contained in law.
 - 1. Please see Letter Opinion 2020-L-04, Definitions, pages 3-8.
 - ii. The DWR puts forward the following language for consideration:
 - 1. Maintenance: Actions that preserve the original design, form, and function of a project without altering its original design, form, or function.
 - 2. Repair: Actions that rebuild or restore damaged or eroded portions of a project to its original design, form, or function.
 - 3. Modifications: Actions that change the original design, form, or function of a project.
- e. There should be some articulated sideboards that preclude maintenance funding from being used for new and redesign where the project is significantly altered and the assessed have no recourse or vote.
 - i. On September 1, 2020, the ND Attorney General issued Opinion 2020-L-04 regarding several questions from Senator Rich Wardner regarding assessment drains, including the use of maintenance funding for projects. The below excerpts are worth considering.

ii. Letter Opinion 2020-L-04, Analysis, Section IV, pages 12-13:

Further, you ask a number of related questions concerning whether a vote of the landowners is required before commencing a project under N.D.C.C. ch. 61-16.1 referred to as maintenance by a “Resolution of Necessity” when the project, as a whole, will exceed the maximum six-year levy under N.D.C.C. § 61-16.1-45, and also whether the maximum accumulated maintenance levy under N.D.C.C. §§ 61-16.1-45 and 61-21-46 are calculated on a project-by-project basis.

Several assumptions must be made to answer the initial portion of this question. First, because you have limited your question to projects under N.D.C.C. ch. 61-16.1, the provisions of N.D.C.C. ch. 61-21 do not apply; however, for drains managed under that chapter, N.D.C.C. §§ 61-21-46 and 61-21-47 could be relevant to your question.

Second, I am assuming the “project” is not one constructed by a federal agency such that N.D.C.C. § 61-16.1-40.1 (dealing with federally constructed projects) would apply to this question.

Third, as discussed above, “project” is defined quite broadly in N.D.C.C. § 61-16.1-02. Because your question explicitly references N.D.C.C. § 61-16.1-45, and due to the context of the remainder of your questions, I will assume your request is limited to drains/assessment drains, rather than the entire scope of “projects” defined in N.D.C.C. § 61-16.1-02.

Finally, I am aware that some water resource boards use a “Resolution of Necessity” simply as a means to “authorize” particular actions or projects the board wishes to undertake. Therefore, I presume the term “Resolution of Necessity” does not imply a particular legal meaning within the context of this question, but is just a formal substitute for the term authorization.

Under N.D.C.C. § 61-16.1-45,²⁹ water resource districts may establish a fund for the costs of clean out and repair of assessment drains. Each fund established under this section would be specific to a given assessment project. In other words, a water resource district could establish several distinct funds, each containing levy amounts that could only be expended on clean out and repairs for the specified project.

Each year, the water resource district may levy up to the maximum amount authorized by the statute, per drain fund, regardless of whether there is any planned clean out or repairs for that year. The water

resource district may accumulate up to six years' worth of levies in an account per drain fund.

Your questions all relate to the funding of a project that would cost more than the maximum allowable fund balance, how that project can be funded, and whether additional voting is required. A project such as this could be funded in several ways, which will determine whether additional voting is required.

The relevant portion of N.D.C.C. § 61-16.1-45 states: “[i]f the cost of, or obligation for, the cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six-year period, the board shall obtain approval of the majority of the landowners [by vote] *before obligating the district for the costs.*”³⁰

1. Footnote 29: This analysis would equally apply to N.D.C.C. § 61-21-46 because these statutes are identical in all material respects.
2. Footnote 30: N.D.C.C. § 61-16.1-45(3) (emphasis added).

iii. Letter Opinion 2020-L-04, Analysis, Section V, page 13

Next you ask who is responsible for ensuring that the maximum six-year accumulated maintenance levy under N.D.C.C. §§ 61-16.1-45 and 61-21-46 is not exceeded.

When a levy is sought, a water resource board must file with the county auditor of each county in the district a financial report for the preceding calendar year showing the ending balances of each fund held by the water resource district during that year.³¹ The report and the proposed budget are provided to the county commission for approval.³² Initial responsibility for all water resource district budget related items falls to the board of the water resource district. The county auditor has oversight responsibility for a district's financial expenditures, as does the board of county commissioners.³³ Additionally, the country treasurer has some oversight responsibility.³⁴ Thus, the budget and levy process provide many opportunities for review by various county officials.³⁵ Ultimately, it is the county commission that has the authority to direct that any accounts of the county be audited and verified.³⁶

1. Footnote 31: N.D.C.C. § 61-16.1-06.
2. Footnote 32: *Id.*
3. Footnote 33: N.D.C.C. § 61-16.1-06; *see also*, N.D.C.C. §§ 11-13-02, 11-13-04.
4. Footnote 34: N.D.C.C. §§ 11-14-06 through 11-14-10.

5. Footnote 35: All county records regarding its accounts and levy status are subject to the North Dakota open record laws. See, N.D.C.C. § 44-04-18.
 6. Footnote 36: N.D.C.C. § 11-11-11(3).
5. Section 8 – pages 12 and 13 – lines 29 – 8
 - a. N.D.C.C. ch 61-16.1, with the proposed repeal of N.D.C.C. ch. 61-21, is the only vehicle for assessment projects, including drains.
 - b. Proposed language references “proposed drain” instead of “proposed project” as done elsewhere in draft bill.
 - c. This could have unintended limitations of “request” projects.
 6. Section 11
 - a. Page 16 – lines 18-19
 - i. The deletion of the official county newspaper is problematic because then WRD could publish in the Bismarck Tribune, Fargo Forum, etc. Not everyone gets those or has access.
 7. Section 13 – page 19 - lines 20 – 30
 - a. Same issue remains that the WRD may adjust the assessments at the hearing but there is no finality to the hearing, which leaves the appeal start date open under 16.1-23.
 8. Section 20 – page 23 – lines 19 - 20
 - a. “shall make necessary openings... at its own expense” continues to makes it seem like 100% cost of culvert replacement due to assessment drains is a road authority expense. May need more clarification.
 9. Section 23 – page 26 (See comments on Section 2 above)
 - a. Changed to only apply to obstruction of artificial drains, removing existing coverage and process for obstructions to “waterways” and “watercourses”
 - b. In order to keep the obstruction procedure as clear as possible, “waterway” could be moved from N.D.C.C. § 61-01-23 as proposed and instead be inserted as part of N.D.C.C. § 61-16.1-51.
 10. Section 29 – lines 3 – 5
 - a. The “area in which the drain will lie” appears to only focus on drain footprint and not contributing area of the drain.
 11. Section 32
 - a. Appears to be in conflict with N.D.C.C. § 61-32-07 (drainage complaint code) and duplicates an existing administrative appeal process (see attached DWR appeal

chart for detailed outline of drainage complaint and appeal process under N.D.C.C. ch. 61-32).

- b. N.D.C.C. § 61-32-07 not proposed to be repealed with this bill
- c. N.D.C.C. ch. 61-32 specific to authorized drainage of water, so complaint regarding unauthorized drainage may make sense to keep in same N.D.C.C. chapter.

23.0025.03000:

1. Section 6

- a. DWR supports leaving language as proposed in draft 25.02000 because it affords the water resource districts the latitude to use DWR EA guidance document but does not force them to use DWR EA tool.
- b. The DWR does not currently have available staffing resources to support broad EA tool usage outside of the current State Water Commission cost-share application review support as outlined in N.D.C.C. § 61-03-21.4.

2. Section 12

- a. Same as comment 1(d) for bill 23.0024.03000.

DRAFT FOR CONSIDERATION BY WATER DRAINAGE COMMITTEE

Definitions: Proposed & Existing | April 2022

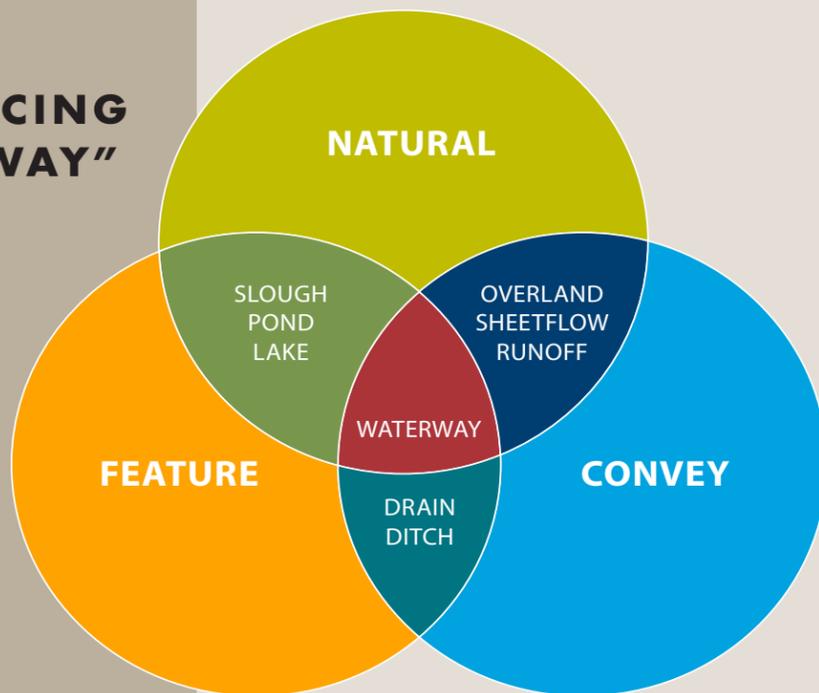
EXISTING DEFINITIONS

"Watercourse" is defined in N.D.C.C. § 61-01-06.
"Assessment drain" is defined in N.D.C.C. § 61-16.1-02(2).
"Drain" is defined in N.D.C.C. § 61-21-01(4) and elsewhere.

PROPOSED NEW DEFINITION BY DWR

"Waterway" is a natural, geologic feature that conveys surface water over land.

INTRODUCING "WATERWAY"



- DOES NOT CONVEY**
Generally, sloughs, ponds, or lakes do not convey sheetwater or surface runoff. They are all features that retain or temporarily detain water naturally.
- IS NOT A FEATURE**
There is not a confining feature to overland flow or runoff. Land forms may convey natural runoff, but there is not a discernable water feature beyond temporary inundation or flooding.
- IS NOT NATURAL**
Drains and ditches are artificial features, such as channels or pipes, that convey surface waters. They are not natural, but may be augmentations of natural systems, such as the case with straightening of a watercourse or constructing a drain in a waterway.

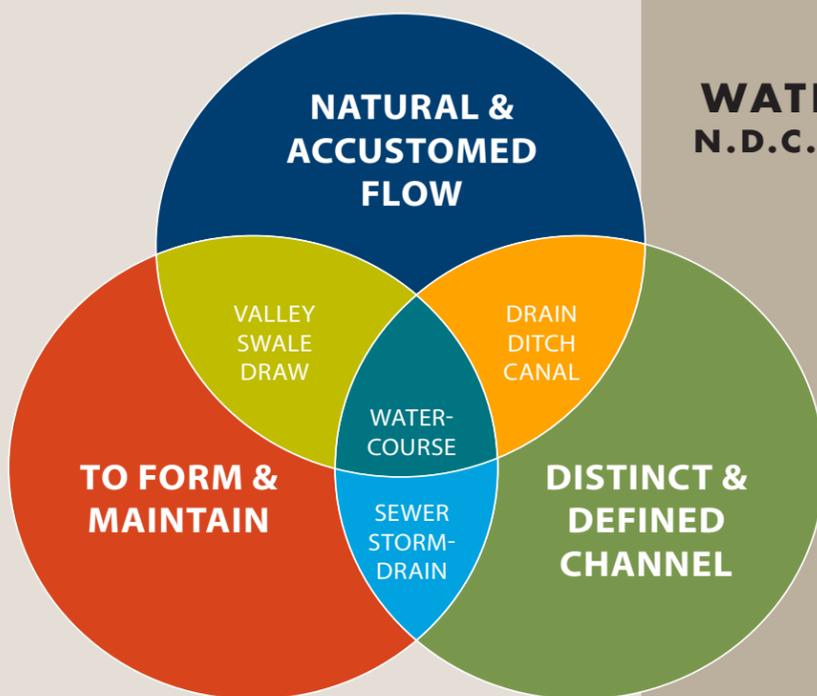
"WATERWAY" HIERARCHY

WHAT DO YOU WANT TO CONSIDER A "WATERWAY?"

- What is considered a waterway depends on what you want to regulate and why.
- A "waterway" would be a broader term applied to all natural water features that convey flow over land.
- A "watercourse" is a specific type of waterway that includes a plainly defined channel of permanent character.
- OTHER WATER FEATURES**
Sloughs, ponds, lakes, wetlands, and other depressional-type, natural water features are generally not considered "waterways" but may infrequently exhibit characteristics of a waterway.

- WATERWAY**
This is an overarching term for "a geologic feature that conveys surface water over land."
- EXAMPLE WATERWAYS**
Draw, swale, valley, coulee, ravine, floodplain, floodway, tributary, brook, creek, stream, river, watercourse.
- WATERCOURSE**
A "watercourse" is a specific type of waterway that is defined in N.D. Century Code § 61-01-06.

- NOT DISTINCT & DEFINED**
There must be a distinct and defined channel to constitute a watercourse.
- INSUFFICIENT FLOW**
There must be sufficient flow, whether periodic or continuous, to form and maintain a distinct and defined channel.
- NOT FROM NATURAL SOURCES**
Watercourses are inherently natural, however, there can be instances where natural systems are improved or modified. The flow would still be from a natural source and still accustomed enough to form and maintain a channel.



WATERCOURSE
N.D.C.C. § 61-01-06

Testimony
Senate Bill 2036 – Department of Water Resources
Senate Agriculture and Veterans Affairs Committee
Senator Larry Luick, Chairman
January 20, 2023

Chairman Luick, and members of the Senate Agriculture and Veterans Affairs Committee – I am Matt Lindsay, Engineering & Permitting Section Manager of the Department of Water Resources (Department). I am here today to provide general support for Senate Bill 2036, which proposes to amend portions of North Dakota Century Code title 61, relating to water-related definitions and regulatory oversight.

Senate Bill 2036 was created by the Interim Water Drainage Committee as a result of SB 2208 passed by the 67th legislative assembly. In particular, the committee was charged to study and answer certain questions to optimize water and drainage law in North Dakota.

Senate Bill 2036 largely addresses local Water Resource District and Board actions. The Department previously provided comments for consideration to the Interim Water Drainage Committee on this bill, as well as now-titled Senate Bill 2037, which are attached. As a result, the Department has identified a couple of sections within Senate Bill 2036 worth highlighting for this committee.

In Section 1, the incorporation of a “waterway” definition was completed with Department engagement. The Department created an exhibit during the interim committee work, which is attached to this testimony for additional context. Again, a “waterway” is proposed to mean all natural features that convey surface water, while a “watercourse” is a special type of “waterway” with specific legislative jurisdictional considerations. The Department supports the proposed language in Section 1.

Related to Section 2, the Department believes there may have been a drafting misunderstanding with use of the proposed term “waterway.” After discussing with interested parties, the Department would support an amendment to replace all uses

of the term “waterway” with the term “watercourse” on page 2, lines 3 through 22 of Senate Bill 2036.

Also in Section 2, the State Water Commission, as an appointed board, is not set up to execute the referenced administrative and regulatory water management functions. As is done for drainage (N.D.C.C. § 61-32-08) and construction (N.D.C.C. § 61-16.1-53.1) complaints and complaint appeals, the Department is the more appropriate state administrative remedy with regulatory authority. The Department would support an amendment to replace “state water commission” with “Department of Water Resources” on page 2, line 8 of Senate Bill 2036.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

Testimony for SB 2036

Date: submitted on 1-19-23

By: Gary Heintz

19 1st. Avenue NW, Chaseley, ND 58423

Cell phone: 701-650-2064

Email: renespeech@gmail.com

My name is Gary Heintz from Chaseley, ND. I am neutral on this bill, SB 2036, to change the current rules and regulations regarding water drainage districts.

I am a taxpayer within the Hurdsville legal drain and pay an assessment for that project. The criteria for the assessment levels were set by the engineer hired by the Wells County Water Resource District. The assessment levels were set at 100%, 50%, and 10% depending on location relative to the two lakes that act as reservoirs. These assessment levels did not take into account land use (crop vs. pasture), land value, or any type of appraisal.

My assessment amount is \$154 per acre on the land assessed at 100% and \$77 per acre on the land assessed at 50%. My present yearly assessment exceeds the amount of my land real estate taxes on these tracts. My total assessment for this project was \$51,000. If paid out over a multiple year bond it was projected to be over \$80,000 with the interest rate that was in place at the time the funding was acquired by the Wells County Water Resource District. This is without any additional operational and maintenance costs. This may not seem like an excessive amount to some but the lake on my land is the final reservoir and as a result I have so far lost access to 8 acres of land and am holding the water for the project. Those of us that are holding the water in the reservoir lakes on our land are paying the highest assessment rates while the upstream landowners are paying lower assessment rates and are benefitting by removing water on their land through continued tiling and draining. Hopefully the changes provided by this bill will provide a more equitable method of assessment.

Three primary concerns that I have with the proposed changes to SB 2036 are:

- 1.) The timelines procedure for water projects which are contained in the present state statutes. The present statutes are restrictive in respect to the short amount of time that the landowners are expected to voice any objections to portions of the project or the assessment process. In Section 61-16.1-23 there is a proposed elimination of the ten-day time limit to appeal objections about the project to the Department of Water Resources. This timeline should not be eliminated but extended to 60 days to provide more time for discussion and decision.
- 2.) The proposed change of Section 61-16.1-23 which would increase the percentage from 20% to 33% of assessment votes needed to protest the project. This increase of percentage would be a higher threshold to present an objection and would prevent a smaller parcel owner from voicing their concern primarily about fair and equitable assessment levels and/or other design portions of the project.

- 3.) The process which addresses the area of notification and rights of persons outside of the project area that may be effected such as downstream landowners, rural water systems, and municipal water systems as to potential change in water quality and increased flow of water.

Thank You for the opportunity to voice my concerns.

Respectfully,

Gary Heintz

January 19, 2023

Senate Agriculture & Veterans Affairs Committee
c/o Senator Larry Luick, Chair
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2036

Dear Chairman Larry Luick and Members of the Senate Agriculture Committee:

The Bottineau County Water Resource District operates & maintains over 16 assessment drains and consolidated assessment drain projects within its jurisdiction in Bottineau County. The District has several assessment drains currently under construction. Its most recent assessment drain project, the South Landa Drain, was approved by over 88 percent of the votes filed for the project.

I serve as Chair of the Bottineau County Water Resource District and recently served as a Citizen Member on the Interim Water Drainage Committee as a representative of the North Dakota Water Resource District Association. Senate Bill 2036 was created as the result of work of the Interim Water Drainage Committee, which was responsible for studying and answering certain questions related to water management and drainage law in North Dakota.

The Bottineau County Water Resource District Board of Managers reviewed S.B. 2036 at its most recent meeting and authorized me to submit this testimony in neutral position for the Introduced Version 23.0024.03000.

This testimony is submitted to raise concerns about Section 25 of S.B. 2036, which provides that any person aggrieved from any order or decision of a water resource board may request assistance from the North Dakota mediation service to resolve grievances. Mediation is a good tool when all impacted parties are involved and when a resolution between the parties exists, but the parties need help finding it. However, not all orders or decision of a water resource board can be appropriately addressed through mediation. Many orders or decisions significantly impact other parties in the district. Without the participation of those parties, the water resource board can hardly mediate the raised concerns.

For example, mediation is particularly inappropriate in the instance of one or a few aggrieved persons who request to mediate the water resource board's order establishing a proposed

project as required under NDCC 61-16.1-19 if more than fifty percent of the votes filed are in favor of establishing the project. If the aggrieved person seeks to request the water resource board modify the project design, or order dismissal of a project otherwise approved by a majority of the votes filed, the interests of other voting landowners may be adversely impacted without their participation in the mediation process. We suspect the water resource board would not even have the authority, through mediation, to modify project designs or dismiss a project otherwise approved by landowner vote. Offering mediation will create expectations in some circumstances where a resolution does not exist. This will cause frustration with aggrieved parties and water resource boards.

The Bottineau County Water Resource District Board request the Committee consider removing Section 25 from S.B. 2036. Thank you for the opportunity to submit this testimony for your consideration.

Sincerely,

Clifford Issendorf
Board of Managers Chair, on behalf of the
Bottineau County Water Resource District

The logo for the North Dakota Water Resource Districts Association features a dark blue silhouette of the state of North Dakota. Inside the silhouette, the text "North Dakota Water Resource Districts Association" is written in white, stacked in four lines.

North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

Dear Chairman Luick and Senate Ag Committee:

My name is Jack Dwyer, and I serve as the Executive Secretary for the North Dakota Water Resource Districts Association (NDWRDA). The NDWRDA supports SB 2036, which combines the assessment process available under NDCC 61-16.1 and the assessment process available under NDCC 61-21. We believe combining these two processes into one will make the assessment process utilized by water resource districts more consistent statewide.

On behalf of the Water Resource Districts Association, I want to thank the members of the Interim Water Drainage Committee for their work on this legislation.

Sincerely,

/s Jack Dwyer



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Agriculture Committee
January 20, 2023**

Chairman Luick and members of the committee,

Thank you for the opportunity to testify on Senate Bill No. 2036. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union’s members. NDFU supports SB 2036, because it streamlines regulations governing water drainage projects, providing important clarity for farmers and ranchers.

NDFU thanks the chairman and all the members of the Interim Water Drainage Committee for all their work on this bill during the interim. We encourage a “Do Pass” recommendation on SB 2036. Thank you for your consideration. I will stand for any questions



North Dakota Legislative Council

Prepared for the Water Drainage Committee
LC# 23.9337.01000
August 2022

EXPLANATION OF BILL DRAFT [23.0024.03000] RELATING TO ASSESSMENT PROJECT PROCEDURES

BILL DRAFT OVERVIEW

Bill draft [23.0024.03000] creates a uniform assessment procedure for all water projects by repealing North Dakota Century Code Chapter 61-21; amending Chapter 61-16.1; and addressing conflicts and redundancies between Chapters 61-16.1, 61-21, and 61-32.

SECTION-BY-SECTION DESCRIPTION

- Section 1 of the bill draft amends Section 61-01-06 to define "waterway."
- Section 2 of the bill draft amends the procedural requirements under Section 61-01-23 for investigating and removing an obstruction to a channel. The definition of "watercourse" was amended to "waterway" to provide a smaller, localized definition of a channel while encompassing the permanent characteristics of a "watercourse." Section 61-01-23 was further amended to clarify the procedural steps an agency or authority must take before entering a landowner's property. Landowners affected by downstream flooding can request assistance from the State Water Commission, water resource district, municipality, or any federal agency involved in flood prevention. The agency or authority is required to provide the landowner with a 30-day notice to remove the obstruction before entering, investigating, and removing the obstruction at the landowner's expense.
- Section 3 of the bill draft amends Section 61-05-02.1, which pertains to the creation and jurisdiction of irrigation districts, by removing a reference to Chapter 61-21, which is repealed by the bill draft.
- Section 4 of the bill draft amends the definitions section of Chapter 61-16.1, which pertains to the operation of water resource districts, to incorporate definitions from the repealed Chapter 61-21, including the definition of "cleaning out and repairing a drain," "drain," and "lateral drain." The section also amends the definitions of "assessment drain," "project," and "water resource board" for clarification and adds a definition for "practical drainage area" to clarify the area surveyed and examined by an engineer for the construction of an assessment drain.
- Section 5 of the bill draft amends Section 61-16.1-09, pertaining to the powers of a water resource board. Section 61-16.1-09(6) was amended to clarify the board's power to repair and clean out a drain. Section 61-16.1-09(24) was amended to clarify the board's power to establish, deepen, widen, and improve drains. Additional language was added clarifying the power to install artificial subsurface drainage systems under Section 61-16.1-09(25). Language referencing authority under the repealed Chapter 61-21 was removed from Section 61-16.1-09(11).
- Section 6 of the bill draft enacts a new section to Chapter 61-16.1, regarding the acquisition of a right-of-way easement. The language was adopted from the repealed Chapter 61-21 and amended to address proper ownership of easements obtained for assessment projects. Language relating to warrant negotiations from the previous draft was removed.
- Section 7 of the bill draft amends Section 61-16.1-09.1, regarding who can determine benefits to a property. The reference to benefits being determined in accordance with Section 61-16.1-17, based on the engineering report, is replaced with a reference to Section 61-16.1-18, to clarify the power to assess benefits lies with the water resource board.
- Section 8 of the bill draft amends Section 61-16.1-15, which pertains to the process for initiating a project financed through revenue bonds, general taxes, or special assessments. Currently, assessment drain projects are reflected in Chapters 61-21 and 61-16.1. Under Chapter 61-21, landowners may petition to initiate an assessment drain project whereas under Chapter 61-16.1 the water resource board must initiate a project on its own behalf. Section 8 of the bill draft creates a uniform process under Section 61-16.1-15,

providing rural and city petitioners the ability to initiate a project. A requirement for landowners to pay petition costs has been included; however, if a project is abandoned, the board may not require the petitioners to pay petition costs. Language referencing water resource board policy and cost-benefit analysis has been removed. Additionally, language requiring the board to only apportion costs of the project to lots, pieces, or parcels of land in proportion to the benefits accruing, and the responsibilities between upstream and downstream landowners regarding surface water management has been removed.

- Section 9 of the bill draft amends Section 61-16.1-17, regarding the procedure for a proposed assessment district. The section is amended to provide notification requirements to landowners. If the board adopts a resolution for construction, the board is required to publish the resolution in the newspaper of general circulation in each area where lands may be affected by the project. Additionally, before an engineer is allowed to enter a landowner's property, the board is required to provide written notice to each landowner at the landowner's address as shown by the tax rolls of the county.
- Section 10 of the bill draft amends Section 61-16.1-18, regarding the notice of hearing on assessment projects. The contents of the initial hearing notice to landowners have been amended to include the addition of a voting ballot. Currently, boards are required to publish notification in the newspapers of the lands affected by the project, as well as each area in which the landowner resides. This requirement was amended and limited to only require publication in areas where the affected lands are located.
- Section 11 of the bill draft amends Section 61-16.1-19, regarding the process for voting on a proposed project and the publication of the project's voting results. The amendments require water resource boards to advise landowners by publication of the voting results in addition to the landowner's right to appeal, clarify when a vote is timely, and prohibit boards from opening mail-in ballots before the conclusion of the voting period. Additionally, the previous requirement to publish an order establishing or denying a project in the newspaper in the area in which the landowner resides has been removed. The order establishing or denying a project must be published only in the newspaper of general circulation in the area in which the affected lands are located.
- Section 12 of the bill draft amends Section 61-16.1-20, regarding the voting rights of landowners. This section was amended for form and style purposes. No substantive changes were made.
- Section 13 of the bill draft amends Section 61-16.1-21, regarding cost-benefit analysis. Currently, water resource boards review several factors when determining if property benefits from an assessment project. These factors include property values, degree of improvement, and productivity. The final factor, which is the board's policy expressed in Section 61-16.1-15 regarding cost-benefit analysis per parcel, has been removed when determining benefits to lands. The remaining amendments consist of form and style changes.
- Section 14 of the bill draft amends Section 61-16.1-22, clarifying the notice requirements in connection to Section 61-16.1-18. Currently, notice of the assessment hearing must be published in the newspaper once a week for 3 consecutive weeks and the assessment hearing must be scheduled at least 30 days after the notice is mailed. The amendments change the publication requirement to once a week for 2 consecutive weeks, with the assessment hearing being scheduled within 20 days after notice is mailed.
- Section 15 of the bill draft amends Section 61-16.1-23, which pertains to appeals to the Department of Water Resources. Currently, landowners have 10 days from the conclusion of the assessment hearing to file an appeal. The statute of limitations for an appeal was amended from 10 to 20 days to provide landowners additional time to review the final assessment list. Language referencing the assessment hearing has been removed, due to assessment lists being finalized at a later date and time. To address the procedural conflict, an appeal must now be made within 20 days after the meeting at which the water resources board approves the final assessment list. The amendments also increase the minimum required threshold of possible votes possessed by a political subdivision before a political subdivision may appeal an assessment from 20 percent of the possible votes to 33 percent of the possible votes.
- Section 16 of the bill draft amends Section 61-16.1-24 to provide form and style changes. No substantive changes were made.
- Section 17 of the bill draft amends Section 61-16.1-26 to provide form and style changes. No substantive changes were made.
- Section 18 of the bill draft amends Section 61-16.1-27 to provide form and style changes. No substantive changes were made.
- Section 19 of the bill draft amends Section 61-16.1-28 to provide form and style changes. No substantive changes were made.

- Section 20 of the bill draft amends Section 61-16.1-42, regarding drainage construction along or across a public road or railroad. Language was added to clarify the distribution of costs among political subdivisions for constructing, maintaining, and repairing a culvert or bridge. Currently, the board is required to provide notice to the highway authority or railroad authority before constructing a bridge or culvert across a public highway or railroad. Section 20 of the bill draft proposes an additional requirement to solicit guidance from the impacted political subdivision. Because the highway or railroad authority cannot vote on the proposed project, this amendment ensures the political subdivision can afford the costs of construction as well as provides the political subdivision time to review and conform with any highway or railroad guidelines.
- Section 21 of the bill draft amends Section 61-16.1-43, regarding the allocation of costs for construction of bridges and culverts. Amendments made under Section 20 of the bill draft requiring a water resource board to notify and solicit guidance from the political subdivision are mirrored in this section. Amendments to this section also require bridges or culverts to be maintained by the water resource board, unless a previous alternative agreement has been made between the water resource board and the highway authority. An appeal process for a decision of the water resource board under Chapter 28-34 has been included if a request for maintenance submitted by the county or township is denied. Lastly, an amendment requires a county to request federal funding for a project upon a request from the water resource board.
- Section 22 of the bill draft enacts a new section to Chapter 61-16.1, outlining the procedural requirements for requesting a culvert within an assessment area. The new section was adopted from Section 61-21-02.1 and amended to mirror the notice and guidance requirements found in Sections 20 and 21 of the bill draft, as well as the requirements for allocating costs provided under Section 61-16.1-43.
- Section 23 of the bill draft amends Section 61-16.1-51, regarding removal of obstructions to drains, by limiting the applicable drains to "artificial drains" in reference to the notice, hearing, and appeals process for obstructions to a drain. The section also was amended to remove the reference to a watercourse from the definition of "an obstruction to a drain" to mirror amendments made under Section 2 of the bill draft.
- Section 24 of the bill draft makes form and style changes to Section 61-16.1-54, regarding appeals of water resource board decisions to the district court. No substantive changes were made.
- Section 25 of the bill draft enacts a new section to Chapter 61-16.1 relating to mediation services. The new section provides an alternative to appeals to allow an aggrieved person to request assistance from the North Dakota mediation services to resolve grievances arising from an order or decision of a water resource board. If the mediation service agrees to assist, the water resource board is required to participate in the mediation in good faith.
- Section 26 of the bill draft enacts a new section to Chapter 61-16.1 relating to the designation of a lateral drain. The language in this section was adopted from Section 61-21-01. No substantive changes were made.
- Section 27 of the bill draft enacts a new section to Chapter 61-16.1 relating to letting of contracts. The language in this section was adopted from Section 61-21-24. No substantive changes were made.
- Section 28 of the bill draft enacts a new section to Chapter 61-16.1 relating to contract extensions and reletting. The language in this section was adopted from Section 61-21-26. No substantive changes were made.
- Section 29 of the bill draft enacts a new section to Chapter 61-16.1 relating to the construction or extension of assessment drains through two or more counties. The language in this section was adopted from Section 61-21-34. No substantive changes were made.
- Section 30 of the bill draft enacts a new section to Chapter 61-16.1 relating to drain warrants, terms, and amounts. The language in this section was adopted from Section 61-21-50. No substantive changes were made.
- Section 31 of the bill draft enacts a new section to Chapter 61-16.1 relating to unpaid warrants. The language in this section was adopted from Section 61-21-35. No substantive changes were made.
- Section 32 of the bill draft enacts a new section to Chapter 61-16.1 relating to noncomplying drains. The language in this section was adopted from Section 61-21-67. No substantive changes were made.
- Section 33 of the bill draft enacts a new section to Chapter 61-16.1 relating to the reconveyance of lands no longer required for drainage. The language in this section was adopted from Section 61-21-48. No substantive changes were made.
- Section 34 of the bill draft enacts a new section to Chapter 61-16.1 relating to sinking funds and bonds. The language in this section was adopted from Section 61-21-54. No substantive changes were made.

- Section 35 of the bill draft enacts a new section to Chapter 61-16.1 relating to existing obligations and regulations of county commissioners and drainage boards. This section was adopted from Section 61-21-50. No substantive changes were made.
- Section 36 of the bill draft removes a reference to the repealed Chapter 61-21 from Section 61-32-03.1(4)(g), which pertains to permit requirements for draining subsurface water.
- Section 37 of the bill draft removes a reference to the repealed Chapter 61-21 from Section 61-32-03.2(3), which pertains to subsurface water management systems.
- Section 38 of the bill draft repeals Section 61-16.1-01, which references the legislative intent and purpose of the chapter, and Chapter 61-21, which pertains to drainage assessment projects.

Testimony on 2036, 68th Session

Chairman Porter and Committee, my name is Phil Murphy representing the ND Soybean Growers Association. We stand in support of 2036 as it represents the efforts of all parties involved during the interim process of the Water Drainage Committee and all agreed. I submit this in case circumstances prevent me from showing up on time for your hearing. The two conflicting sections of code had led to problems and inconsistencies. Having attended all of those interim meetings, it is good to see this bill which merges said codes pass without dissension. We at NDSGA thank you for your favorable consideration.

Testimony
Senate Bill 2036 – Department of Water Resources
House Energy and Natural Resources Committee
Representative Todd Porter Chairman
March 2, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee – I am Matt Lindsay, Engineering & Permitting Section Manager of the Department of Water Resources (Department). I am here today to provide general support for Senate Bill 2036, which proposes to amend portions of North Dakota Century Code title 61, relating to water-related definitions and regulatory oversight.

Senate Bill 2036 was created by the Interim Water Drainage Committee as a result of SB 2208 passed by the 67th legislative assembly. In particular, the committee was charged to study and answer certain questions to optimize water and drainage law in North Dakota.

Senate Bill 2036 largely addresses local Water Resource District and Board actions. The Department previously provided comments for consideration to the Interim Water Drainage Committee on this bill which are attached. As a result, the Department has identified a couple of sections within Senate Bill 2036 worth highlighting for this committee.

In Section 1, the incorporation of a “waterway” definition was completed with Department engagement. The Department created an exhibit during the interim committee work, which is attached to this testimony for additional context. Again, a “waterway” is proposed to mean all natural features that convey surface water, while a “watercourse” is a special type of “waterway” with specific legislative jurisdictional considerations. The Department supports the proposed language in Section 1.

In Sections 2 and 23, the Department believes the inclusion of authority over obstruction to drain complaints was inadvertently broadened to include all water regulatory entities, including federal, state, and local entities. This may not have

been the legislature's intent and could confuse the jurisdictional authorities over channel obstructions.

The existing language in SB 2036 could have the result of expanding section 61-01-23 beyond its original intent, which was for emergency flooding and ice jam situations. Consequently, the Department recommends retaining obstruction complaint authority to only water resource boards as section 61-16.1-51 currently reads. To accomplish this, the Department recommends returning sections 61-01-23 and 61-16.1-51 each to their original forms (i.e., pre-SB2036) and addressing the natural and artificial obstruction issue within Section 23 or section 61-16.1-51.

Specifically, the Department recommends the following revisions to SB 2036:

- Return sections 61-01-23 and 61-16.1-51 to their original forms.
- Amending existing section 61-16.1-51(1) as follows:
 - “If a water resource board determines that an obstruction to a drain has been caused by the result of a natural occurrence, such as sedimentation or vegetation, or by the negligent act or omission of a landowner or tenant, ...”
- Amending existing section 61-16.1-51(2) as follows:
 - “For the purposes of this section, an “obstruction to a drain” means a natural or artificial barrier to a watercourse or waterway, as defined by section 61-01-06, or an artificial drain...”

In Section 4, the Department believes additional clarity is necessary to advance the goal of clear legislative guidance and intent. The Department recommends the following two definitions be added to SB 2036:

- “Benefited property” means property that accrues benefits from a project.
- “Benefits” means the extent to which society and economies impacted by a project are made better off through lower costs, fewer damages, or enhancements.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

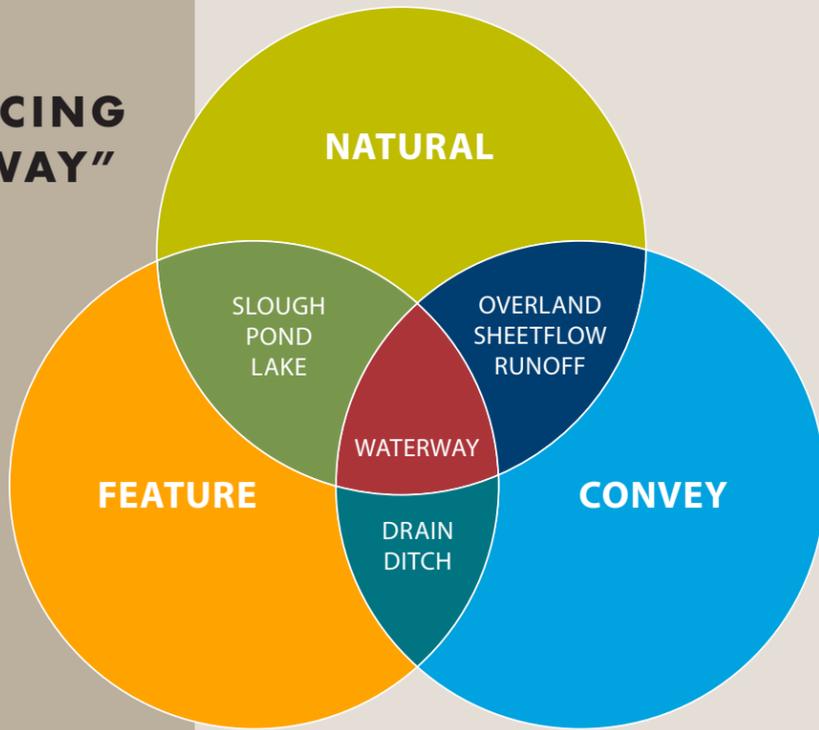
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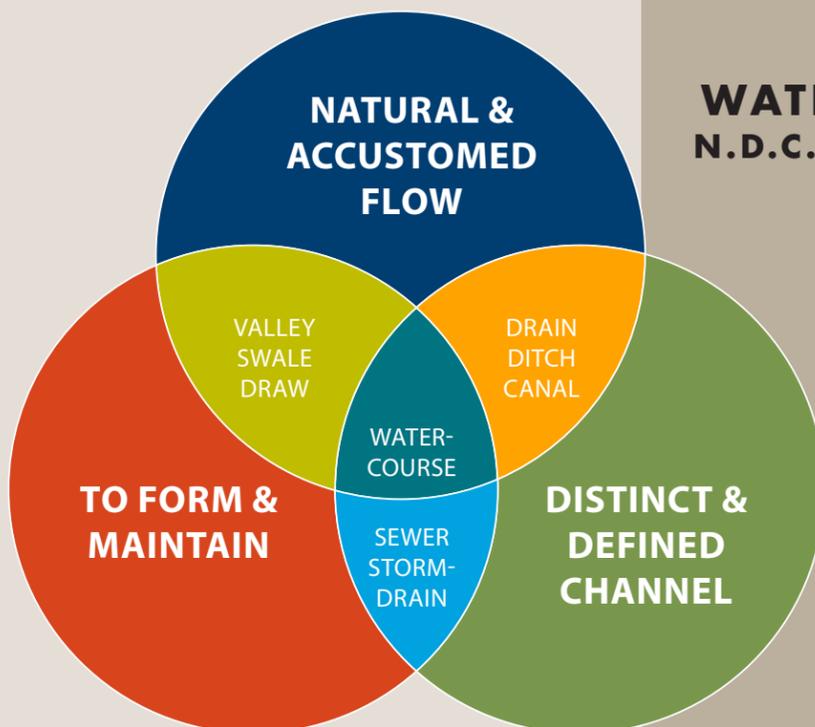
INSUFFICIENT FLOW

There must be sufficient flow, whether periodic or continuous, to form and maintain a distinct and defined channel.



NOT FROM NATURAL SOURCES

Watercourses are inherently natural, however, there can be instances where natural systems are improved or modified. The flow would still be from a natural source and still accustomed enough to form and maintain a channel.



WATERCOURSE
N.D.C.C. § 61-01-06

The logo for the North Dakota Water Resource Districts Association features a dark blue silhouette of the state of North Dakota. Inside the silhouette, the text "North Dakota Water Resource Districts Association" is written in white, stacked in four lines.

North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

Dear Chairman Porter and House Energy and Natural Resources Committee:

My name is Jack Dwyer, and I serve as the Executive Secretary of the North Dakota Water Resource Districts Association (NDWRDA). The NDWRDA supports SB 2036, which combines the assessment process available under NDCC 61-16.1 and the assessment process available under NDCC 61-21. We believe combining these two processes into one will make the assessment process utilized by water resource districts more consistent statewide.

However, there is one very important change that must be made to SB 2036. Generally, road authorities cover the cost of providing and maintaining road openings (culverts and bridges) to provide adequate conveyance under road infrastructure for rivers and streams. Historically, when any road opening needs to be constructed or improved to accommodate an assessment drain, 40% of the cost of construction has been covered by the county, and 60% has been covered by the water resource district. That 60/40 split has always applied to maintenance of those bridges and culverts as well. SB 2036 proposes that water resource districts cover 100% of the costs of maintenance of these bridges and culverts, potentially including 100% of the costs of bridge and culvert replacement or upgrades. Further, the language in 2036 seems to imply that water resource districts, instead of road authorities, are responsible for bridge safety issues. That is far outside the purview of water resource districts.

On the following pages we have provided proposed language that would keep the status quo that has been in place for many years.

On behalf of the Water Resource Districts Association, I want to thank the members of the Interim Water Drainage Committee for their work on this legislation.

Sincerely,

/s Jack Dwyer

Current Version of SB 2036, Section 21:

SECTION 21. AMENDMENT. Section 61-16.1-43 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-43. Construction of bridges and culverts - Costs.

1. The water resource board shall construct ~~such~~ any bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by ~~such the~~ drain. The cost of ~~such construction shall~~ constructing the bridge or culvert must be charged as part of the cost of constructing the drain, ~~and any such.~~ The bridge, or culvert, or passageway shall must be maintained under the authority of the water resource board, and the necessary expense ~~shall~~ must be deemed a part of the cost of maintenance.

~~Whenever~~

2. When any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the water resource board shall notify the county or township with authority for the highway and provide the county or township reasonable time to review and provide input on the plans for the bridge or culvert. The bridge or culvert must be maintained by the water resource board, and the necessary expense must be deemed a part of the cost of maintenance, unless otherwise agreed upon by the water resource board and the highway authority. If the water resource board denies a request for maintenance submitted by the county or township, the county or township may appeal the denial under chapter 28-34. The cost of constructing such the bridge or culvert shall must be shared in the following manner:
 - a. ~~The~~ If funds are available, the state water commission may, ~~if funds are available, participate in accordance with such rules and regulations as it may prescribe according the commission's rules or policies.~~ The remaining cost ~~shall~~ must be borne forty percent by the county and sixty percent by the district ~~which has that~~ created the need for ~~such the~~ construction
 - b. ~~If, however, moneys have not been made~~ funds are not available to the commission for participation ~~in accordance with subsection 1, then~~ forty percent of the cost of a bridge or culvert shall must be paid by the county and sixty percent shall must be charged as the cost of the drain to the district.

~~Where such bridges or culverts are~~

 - c. Upon request from the water resource board, the county shall request federal emergency funds for the construction. If the bridge or culvert is constructed with federal financial participation, including any federal emergency funds, the costs exceeding the amount of the federal participation shall must be borne by the district and county according to the provisions of this section, ~~as the case may be.~~

Proposed Revisions to SB 2036, Section 21:

SECTION 21. AMENDMENT. Section 61-16.1-43 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-43. Construction of bridges and culverts - Costs.

1. The water resource board shall construct ~~such~~ any bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by ~~such~~ the drain. The cost of ~~such construction shall~~ constructing the bridge or culvert must be charged as part of the cost of constructing the drain, ~~and any such~~. The bridge, or culvert, or passageway shall must be maintained under the authority of the water resource board, and the necessary expense ~~shall~~ must be deemed a part of the cost of maintenance.

~~Whenever~~

2. When any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the water resource board shall notify the county or township with authority for the highway and provide the county or township reasonable time to review and provide input on the plans for the bridge or culvert. The bridge or culvert must be maintained by the ~~water resource board county or township;~~ and the county shall pay forty percent of the necessary ~~maintenance expense and the water resource board shall pay sixty percent must be deemed a part of the cost of maintenance,~~ unless otherwise agreed upon by the water resource board and the highway authority. If the ~~highway authority and the~~ water resource board cannot agree on the necessity or proper methodology for maintenance, the requesting party denies a request for maintenance submitted by the county or township, the county or township may appeal the denial under chapter 28-34. The cost of constructing such ~~the~~ bridge or culvert shall must be shared in the following manner:
 - a. The ~~If funds are available, the~~ state water commission may, ~~if funds are available, participate in accordance with such rules and regulations as it may prescribe according the commission's rules or policies.~~ The remaining cost shall must be borne forty percent by the county and sixty percent by the district ~~which has~~ that created the need for ~~such~~ the construction
 - b. ~~If, however, moneys have not been made~~ funds are not available to the commission for participation ~~in accordance with subsection 1, then~~ forty percent of the cost of a bridge or culvert shall must be paid by the county and sixty percent ~~shall~~ must be charged as the cost of the drain to the district.
Where such bridges or culverts are
 - c. Upon request from the water resource board, the county shall request federal emergency funds for the construction. If the bridge or culvert is constructed with federal financial participation, including any federal emergency funds, the costs exceeding the amount of the federal participation ~~shall~~ must be borne by the district and county according to the provisions of this section, ~~as the case may be.~~



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
House Energy and Natural Resources Committee
March 2, 2023**

Chairman Porter and members of the committee,

Thank you for the opportunity to testify on Senate Bill No. 2036. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's members. NDFU supports SB 2036, because it streamlines regulations governing water drainage projects, providing important clarity for farmers and ranchers.

NDFU thanks the members of the Interim Water Drainage Committee for all their work on this bill during the interim. We encourage a "Do Pass" recommendation on SB 2036. Thank you for your consideration. I will stand for any questions

23.0024.04002
Title.

Prepared by the Legislative Council staff for
Representative Hagert
March 15, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2036

Page 1, line 1, replace "thirteen" with "twelve"

Page 1, line 2, after "sections" insert "21-06-07,"

Page 1, line 3, remove "61-01-23,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

21-06-07. Political subdivisions may invest funds.

1. Counties, cities, school districts, park districts, water resource boards, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
 - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
 - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
 - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
 - d. Certificates of deposit, savings deposits, or other deposits fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate deposit placement service as determined by the commissioner of financial institutions.
 - e. State and local securities:
 - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.
 - (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
 - (3) Any security that is a general obligation of a school district and is rated in the highest two categories by a nationally recognized rating agency.
 - (4) Obligations of this state and general obligations of its political subdivisions.

- f. Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

Page 2, remove lines 1 through 23

Page 3, line 17, after "3." insert "Benefited property" means property that has accrued a benefit from a project.

4. "Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.

5."

Page 3, line 20, replace "4." with "6."

Page 3, line 21, replace "5." with "7."

Page 3, line 23, replace "6." with "8."

Page 3, line 31, replace "7." with "9."

Page 4, line 1, replace "8." with "10."

Page 4, line 6, replace "9." with "11."

Page 4, line 8, replace "10." with "12."

Page 4, line 11, replace "11." with "13."

Page 4, line 13, replace "12." with "14."

Page 4, line 18, replace "13." with "15."

Page 20, after line 26, insert:

3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation. Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section."

Page 24, line 20, remove "water resource board, and the"

Page 24, line 21, replace "necessary expense must be deemed a part of the cost of maintenance" with "county or township and all necessary maintenance expenses must be borne forty percent by the county and sixty percent by the water resource board"

Page 24, line 22, after the third "the" insert "highway authority and the"

Page 24, line 23, remove "denies a request for maintenance submitted by the county or"

Page 24, line 24, replace "township, the county or township" with "cannot agree on the necessity or proper methodology for maintaining the bridge or culvert, the requesting party"

Page 26, line 3, remove the overstrike over "a"

Page 26, line 3, remove "an artificial"

Page 26, line 4, after the first "the" insert "result of a natural occurrence, such as sedimentation or vegetation, or by the"

Page 26, line 30, after the second "a" insert "natural or artificial"

Page 26, line 30, remove the overstrike over "a"

Page 26, line 31, remove the overstrike over "watercourse, as defined by section 61-01-06, or"

Page 26, line 31, remove the overstrike over "including if the"

Page 27, line 1, remove the overstrike over "watercourse or"

Page 27, line 1, remove "whether or not the artificial"

Page 27, line 2, remove the overstrike over "watercourse or"

Page 27, remove lines 22 through 30

Page 28, remove lines 1 and 2

Renumber accordingly

23.0024.04002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2036

Introduced by

Legislative Management

(Water Drainage Committee)

1 | A BILL for an Act to create and enact ~~thirteen~~twelve new sections to chapter 61-16.1 of the
2 | North Dakota Century Code, relating to water resource boards; to amend and reenact sections
3 | 21-06-07, 61-01-06, ~~61-01-23~~, 61-05-02.1, 61-16.1-02, 61-16.1-09, 61-16.1-09.1, 61-16.1-15,
4 | 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23,
5 | 61-16.1-24, 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-42, 61-16.1-43, 61-16.1-51, and
6 | 61-16.1-54, and subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota
7 | Century Code, relating to water resource boards and procedures for assessment projects
8 | undertaken by water resource boards; and to repeal section 61-16.1-01 and chapter 61-21 of
9 | the North Dakota Century Code, relating to water resource districts, water resource boards,
10 | assessment procedures and requirements, and drains.

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

12 | **SECTION 1. AMENDMENT.** Section 21-06-07 of the North Dakota Century Code is
13 | amended and reenacted as follows:

14 | **21-06-07. Political subdivisions may invest funds.**

- 15 | 1. Counties, cities, school districts, park districts, water resource boards, and townships
16 | in this state may invest moneys in their general fund, or balances in any special or
17 | temporary fund, in:
- 18 | a. Bonds, treasury bills and notes, or other securities that are a direct obligation of,
19 | or an obligation insured or guaranteed by, the treasury of the United States, or its
20 | agencies, instrumentalities, or organizations created by an act of Congress.
 - 21 | b. Securities sold under agreements to repurchase written by a financial institution
22 | in which the underlying securities for the agreement to repurchase are of a type
23 | listed above.

- 1 c. Certificates of deposit fully insured by the federal deposit insurance corporation
2 or by the state.
- 3 d. Certificates of deposit, savings deposits, or other deposits fully insured or
4 guaranteed by the federal deposit insurance corporation and placed for the
5 benefit of the public depositor by a public depository through an appropriate
6 deposit placement service as determined by the commissioner of financial
7 institutions.
- 8 e. State and local securities:
- 9 (1) Any security that is a general obligation of any state or local government
10 with taxing powers and is rated in the highest three categories by a
11 nationally recognized rating agency.
- 12 (2) An obligation of the state housing finance agency that is rated in the highest
13 two categories by a nationally recognized rating agency.
- 14 (3) Any security that is a general obligation of a school district and is rated in
15 the highest two categories by a nationally recognized rating agency.
- 16 (4) Obligations of this state and general obligations of its political subdivisions.
- 17 f. Commercial paper issued by a United States corporation rated in the highest
18 quality category by at least two nationally recognized rating agencies and
19 matures in two hundred seventy days or less.
- 20 2. Bonds, treasury bills and notes, or other securities so purchased must be taken into
21 consideration in making levies for the ensuing year, and when funds are needed for
22 current expenses, the governing board and authorities of such municipalities may
23 convert those obligations into cash.

24 **SECTION 2. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-01-06. Watercourse and waterway - ~~Definition~~Definitions.**

- 27 1. A watercourse entitled to the protection of the law is constituted if there is a sufficient
28 natural and accustomed flow of water to form and maintain a distinct and a defined
29 channel. The supply of water is not required to be continuous or from a perennial living
30 source. The criteria for constituting a watercourse are satisfied if the flow arises
31 periodically from natural causes and reaches a plainly defined channel of a permanent

1 character. If requested by a water resource board, the department of water resources
2 shall determine whether a watercourse is constituted.

3 2. For purposes of this title, unless the context otherwise requires, "waterway" means a
4 natural, geologic feature that conveys surface water over land.

5 ~~SECTION 3. AMENDMENT. Section 61-01-23 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~61-01-23. Investigation or removal of obstructions in channel watercourse.~~

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

11 ~~1. Upon a request from a landowner affected by a natural or artificial obstruction to a~~
12 ~~watercourse, the state water commission department of water resources, any water~~
13 ~~resource district, any municipality, any board of county commissioners, and any~~
14 ~~federal agency authorized to construct works for prevention of to prevent damage by~~
15 ~~floods or for abatement of abate stream pollution, may shall notify, and upon the entity's~~
16 ~~own volition, may notify, the owner of lands lying adjacent to the obstructed~~
17 ~~watercourse as follows:~~

18 ~~a. The owner of adjacent lands shall remove the obstruction within thirty days of~~
19 ~~receiving the notice; and~~

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

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

28 **SECTION 3. AMENDMENT.** Section 61-05-02.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

2 Notwithstanding section 61-05-02, an irrigation district may not be created if the primary
3 purpose of the district is to provide drainage benefits to residents of the district. A drainage
4 project proposed, undertaken, approved, or subject to assessment by an irrigation district also
5 is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an
6 irrigation district may not impact the authority of a water resource board to assess for drainage
7 projects under chapter 61-16.1 ~~or 61-24~~.

8 **SECTION 4. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **61-16.1-02. Definitions.**

11 ~~In~~For purposes of this chapter, unless the context ~~or subject matter~~ otherwise
12 provides~~requires~~:

- 13 1. "Affected landowners" means landowners whose land is subject to special
14 assessment or condemnation for a project.
- 15 2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~
16 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~
17 ~~nature or description constructed for the purpose of drainage, including dikes and~~
18 ~~appurtenant works, which area drain~~ financed in whole or in part by special
19 assessment. This definition ~~may include more than one watercourse or artificial~~
20 ~~channel constructed for the purpose of drainage when the watercourses or channels~~
21 ~~drain land within a practical drainage area.~~
- 22 3. "Benefited property" means property that has accrued a benefit from a project.
- 23 4. "Benefits" means the degree to which a society or an economy subject to a project is
24 improved through lower costs, fewer damages, or enhancements.
- 25 5. "Cleaning out and repairing a drain" means deepening and widening a drain and
26 removing obstructions or sediment, and any repair necessary to return the drain to a
27 satisfactory and useful condition.
- 28 ~~4.6.~~ "Commission" means the state water commission.
- 29 ~~4.5-7.~~ "Conservation" means planned management of water resources to prevent
30 exploitation, destruction, neglect, or waste.

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

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

10 | ~~7-8-10.~~ "Drain" means any natural watercourse opened, or proposed to be opened, and
11 | improved for drainage, and any artificial channel constructed for drainage. The term
12 | includes dikes and appurtenant works and may include more than one watercourse or
13 | artificial channel when the watercourses or channels drain land within a practical
14 | drainage area.

15 | ~~9-11.~~ "Frivolous" means allegations and denials in any complaint filed with a district made
16 | without reasonable cause and not in good faith.

17 | ~~8-10-12.~~ "Lateral drain" means a drain constructed after the establishment of an original drain
18 | or drainage system and which flows into the original drain or drainage system from
19 | outside the limits of the original drain.

20 | ~~11-13.~~ "Practical drainage area" means, for assessment drains, the practical drainage area
21 | determined by the survey and examination required under section 61-16.1-17.

22 | ~~12-14.~~ "Project" means any undertaking for water conservation; flood control; water supply; water
23 | delivery; erosion control and watershed improvement; drainage of surface
24 | waters; collection, processing, and treatment of sewage; ~~or~~ discharge of sewage
25 | effluent; or any combination thereof, ~~including~~ of purposes in this subsection, and
26 | includes incidental features of ~~any such~~ the undertaking.

27 | ~~9-13-15.~~ "Water resource board" or "board" means the water resource district's board of
28 | managers.

29 | **SECTION 5. AMENDMENT.** Section 61-16.1-09 of the North Dakota Century Code is
30 | amended and reenacted as follows:

1 **61-16.1-09. Powers of water resource board.**

2 Each water resource board shall have the power and authority to:

3 1. Sue and be sued in the name of the district.

4 2. Exercise the power of eminent domain as follows:

5 a. Except as permitted under subdivision b, the board shall comply with title 32 for
6 the purpose of acquiring and securing by eminent domain any rights, titles,
7 interests, estates, or easements necessary or proper to carry out the duties
8 imposed by this chapter, and particularly to acquire the necessary rights in land
9 for the construction of dams, flood control projects, and other water conservation,
10 distribution, and supply works of any nature and to permit the flooding of lands,
11 and to secure the right of access to such dams and other devices and the right of
12 public access to any waters impounded thereby.

13 b. (1) If the interest sought to be acquired is an easement for a right of way for any
14 project authorized in this chapter for which federal or state funds have been
15 made available, the district may acquire the right of way by quick take
16 eminent domain as authorized by section 16 of article I of the Constitution of
17 North Dakota, after the district attempts to purchase the easement for the
18 right of way by:

19 (a) Conducting informal negotiations for not less than sixty days.

20 (b) If informal negotiations fail, the district shall engage in formal
21 negotiations by:

22 [1] Sending the landowner an appraisal and written offer for just
23 compensation, which includes a specific description of the exact
24 location of the right of way, by certified mail or commercial
25 delivery requiring a signed receipt, and receiving the signed
26 receipt or documentation of constructive notice.

27 [2] Sending the landowner a written request for a meeting by
28 certified mail or commercial delivery requiring a signed receipt if
29 there is no agreement regarding compensation or no response to
30 the written offer within fifteen days of receipt, and receiving the
31 signed receipt or documentation of constructive notice.

- 1 [3] Sending the landowner a written notice, by certified mail or
2 commercial delivery requiring a signed receipt, of intent to take
3 possession of the right of way if there is no agreement regarding
4 compensation or no response to the written request for a
5 meeting within thirty days of receipt, and receiving the signed
6 receipt or documentation of constructive notice.
- 7 (2) Any written communication to the landowner must include contact
8 information for responding to the board and a description of the required
9 negotiation timeline.
- 10 (3) A district may not include or utilize any reference to quick take eminent
11 domain during negotiations to acquire the necessary easement for a right of
12 way. If formal negotiation efforts fail, the district shall request approval from
13 the board of county commissioners of the county in which the right of way is
14 located to take possession of the right of way by quick take eminent domain.
15 After receiving the request, the county commissioners shall hold a public
16 meeting and give the landowner thirty days' notice of the meeting to allow
17 the landowner to attend. After receiving verification from the district that
18 there has been no reference or threat of quick take eminent domain by the
19 district during negotiations, the commissioners shall vote on whether to
20 approve the taking of the easement for a right of way using quick take
21 eminent domain. If the county commissioners approve the use of quick take
22 eminent domain by a majority vote, the district may take immediate
23 possession of the right of way, but not a blanket easement, if the district files
24 an affidavit by the chairman of the water resource board which states the
25 district has fulfilled the required negotiation steps and deposits the amount
26 of the written offer with the clerk of the district court of the county in which
27 the right of way is located.
- 28 (4) Within thirty days after notice has been given in writing to the landowner by
29 the clerk of the district court that a deposit has been made for the taking of a
30 right of way as authorized in this subsection, the owner of the property taken
31 may appeal to the district court by serving a notice of appeal upon the

- 1 acquiring agency, and the matter must be tried at the next regular or special
2 term of court with a jury unless a jury be waived, in the manner prescribed
3 for trials under chapter 32-15.
- 4 (5) If ownership of a right of way has not terminated, ownership of a right of way
5 acquired under this subdivision terminates automatically when the district no
6 longer needs the right of way for the purpose for which it was acquired.
- 7 3. Accept funds and property or other assistance, financial or otherwise, from federal,
8 state, and other public or private sources for the purposes of aiding the construction or
9 maintenance of water conservation, distribution, and flood control projects; and
10 cooperate and contract with the state or federal government, or any department or
11 agency thereof, or any municipality within the district, in furnishing assurances and
12 meeting local cooperation requirements of any project involving control, conservation,
13 distribution, and use of water.
- 14 4. Procure the services of engineers and other technical experts, and employ an attorney
15 ~~or attorneys~~ to assist, advise, and act for it in its proceedings.
- 16 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all
17 dams and water conservation and management devices of every nature and water
18 channels, and to control and regulate the same and all reservoirs, artificial lakes, and
19 other water storage devices within the district.
- 20 6. Maintain and control the water levels and the flow of water in the bodies of water and
21 streams involved in water conservation and flood control projects within the district and
22 regulate streams, channels, drains, or watercourses and the flow of water therein
23 them by changing, widening, deepening, ~~or straightening the same~~, or otherwise
24 improving ~~the use and capacity thereof~~ them; or by cleaning out and repairing a drain.
- 25 7. Regulate and control water for the prevention of floods and flood damages by
26 deepening, widening, straightening, or diking the channels or floodplains of any stream
27 or watercourse within the district, and construct reservoirs or other structures to
28 impound and regulate such waters.
- 29 8. Make rules and regulations concerning the management, control, regulation, and
30 conservation of waters and prevent the pollution, contamination, or other misuse of the
31 water resources, streams, or bodies of water included within the district.

Sixty-eighth
Legislative Assembly

- 1 9. Do all things reasonably necessary and proper to preserve the benefits to be derived
2 from the conservation, control, and regulation of the water resources of this state.
- 3 10. Construct, operate, and maintain recreational facilities, including beaches, swimming
4 areas, boat docking and landing facilities, toilets, wells, picnic tables, trash
5 receptacles, and parking areas, and to establish and enforce rules and regulations for
6 the use thereof.
- 7 11. Have, in addition to any powers provided in this chapter, the authority to construct an
8 assessment drain in accordance with the ~~procedures and provisions~~requirements of
9 this chapter 64-24.
- 10 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in
11 its corporate name for its use and control both real and personal property and
12 easements and rights of way within or without the limits of the district for all purposes
13 authorized by law or necessary to the exercise of any other stated power.
- 14 13. Convey, sell, dispose of, or lease personal and real property of the district as provided
15 by this chapter.
- 16 14. Authorize and issue warrants to finance construction of water conservation and flood
17 control projects, assess benefited property for part or all of the cost of such projects,
18 and require appropriations and tax levies to maintain sinking funds for construction
19 warrants on a cash basis at all times.
- 20 15. Borrow money within the limitations imposed by this chapter for projects herein
21 authorized and pledge security for the repayment of such loans.
- 22 16. Order or initiate appropriate legal action to compel the entity responsible for the
23 maintenance and repair of any bridge or culvert to remove from under, within, and
24 around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris,
25 and any artificial block which hinders or decreases the flow of water through such
26 bridge or culvert.
- 27 17. Order or initiate appropriate legal action to compel the cessation of the destruction of
28 native woodland bordering within two hundred feet [60.96 meters] of that portion of a
29 riverbank subject to overflow flooding that will cause extensive property damage, or in
30 the alternative, order, that, if such destruction is permitted, the party or parties
31 responsible for the destruction must, when the board has determined that such

- 1 destruction will cause excessive property damage from overflow flooding due to the
2 erosion or blocking of the river channel, plant a shelterbelt which meets the
3 specifications of the board. In the event the native woodland within such area has
4 already been destroyed, the board may, in its discretion, order the planting of a
5 shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of
6 such river channel where overflow flooding has caused extensive property damage.
7 For purposes of this subsection, the words "riverbank" and "river channel" relate to
8 rivers as defined in the United States geological survey base map of North Dakota,
9 edition of 1963. The provisions of this subsection shall not be construed to limit,
10 impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local
11 entity to construct and maintain any flood control, irrigation, recreational, or municipal
12 or industrial water supply project.
- 13 18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or
14 section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when
15 such zoning is required to regulate and enforce the placement, erection, construction,
16 reconstruction, repair, and use of buildings and structures to protect and promote the
17 health, safety, and general welfare of the public within a floodplain area. In the event
18 such zoning authority fails to act or does not exist, the board may request the state
19 water commission to assist it in a study to determine and delineate the floodplain area.
20 Upon completion of such study, the board shall make suitable recommendations for
21 the establishment of a floodplain zone to all zoning authorities and the governing
22 bodies of all political subdivisions having jurisdiction within the floodplain area.
- 23 19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate,
24 maintain, and repair sanitary and storm sewer systems, or combinations thereof,
25 including sewage and water treatment plants, and regulate the quantity of sewage
26 effluent discharged from municipal lagoons; and contract with the United States
27 government, or any department or agency thereof, or any private or public corporation
28 or limited liability company, the government of this state, or any department, agency,
29 or political subdivision thereof, or any municipality or person with respect to any such
30 systems.

- 1 20. Develop water supply systems, store and transport water, and provide, contract for,
2 and furnish water service for domestic, municipal, and rural water purposes, irrigation,
3 milling, manufacturing, mining, metallurgical, and any and all other beneficial uses,
4 and fix the terms and rates therefor. Each district may acquire, construct, operate, and
5 maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines,
6 tunnels, and any and all works, facilities, improvements, and property necessary
7 therefor.
- 8 21. Coordinate proposals for installation, modification, or construction of culverts and
9 bridges in an effort to achieve appropriate sizing and maximum consistency of road
10 openings. The department of transportation, railroads, counties, and townships shall
11 cooperate with the districts in this effort. Each district shall also consider the possibility
12 of incorporating appropriate water control structures, where appropriate, as a part of
13 such road openings.
- 14 22. Plug abandoned water wells and participate in cost-sharing arrangements with water
15 well owners to plug water wells to protect aquifers from pollution or depletion, maintain
16 pressure, and prevent damage to surrounding property.
- 17 23. Have, in addition to any powers provided in this chapter, the authority to conduct
18 weather modification operations in accordance with the procedures and provisions of
19 chapter 61-04.1.
- 20 24. Establish, deepen, widen, and improve drains; and extend drains as necessary to
21 provide a suitable outlet or reasonably drain lands within a practical drainage area.
- 22 25. Install artificial subsurface drainage systems.

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

25 **Right of way - How acquired - Assessment of damages - Issuance of warrants.**

26 If lands assessed for drainage benefits are not contiguous to the drain, the water resource
27 board may exercise eminent domain to acquire a right of way easement to the drain over the
28 land of others. The right of way, when acquired, is the property of the water resource district in
29 which the lands are located. The board may issue warrants in a sum sufficient to pay the
30 damages assessed for the right of way. The warrants must be drawn upon the proper county
31 treasurer or, if the water resource district treasurer is custodian of the drain funds, water

1 resource district treasurer, and are payable out of drain funds in the hands of the treasurer
2 which have been collected for the construction of the drain for which the right of way is sought.

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

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

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

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

26 (1) If a board that undertakes a project finds the project will benefit lands
27 outside water resource district boundaries, the board shall provide notice to
28 the water resource board where the benefited lands are located together
29 with the report prepared under section 61-16.1-17.

30 (2) The board of each water resource district containing lands benefited by a
31 project must approve the project and assessment by a vote of two-thirds of

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

20 **SECTION 8. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **61-16.1-15. ~~Financing project~~Initiating project financed through revenue bonds,**
23 **general taxes, or special assessments - ~~Apportionment of benefits~~Bond required.**

24 A water resource board ~~shall have the authority~~, either upon request or by its own motion,
25 ~~to~~may acquire needed interest in property and provide for the cost of construction, alteration,
26 repair, operation, and maintenance of a project through issuance of improvement warrants or
27 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
28 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
29 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
30 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
31 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~

1 benefited by the project in proportion to and in accordance with benefits accruing thereto. The
2 board shall assess the proportion of the cost of the project, or the part of the cost to be financed
3 with funds raised through levy and collection of special assessments which any lot, piece, or
4 parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or
5 township which is benefited thereby. In determining assessments, the water resource board
6 shall carry out to the maximum extent possible the water management policy of this chapter that
7 upstream landowners must share with downstream landowners the responsibility to provide for
8 the proper management of surface waters. A request under this section must be in writing and
9 be accompanied by a bond in a sum the water resource board deems sufficient to pay all
10 expenses of the board related to the petition in case the petition is denied. If the proposed
11 project is an assessment drain, the request must identify the starting point, terminus, and
12 general course of the proposed drain and be signed by at least two owners of property that
13 would be drained by the proposed drain. If among the leading purposes of the proposed drain
14 are benefits to the health, convenience, or welfare of the residents of any city, the petition must
15 be signed by a sufficient number of the property owners of the city to satisfy the board there is a
16 public demand for the drain. If a petition under this section is approved by voters under section
17 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay
18 any expenses incurred by the board related to the petition.

19 **SECTION 9. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-16.1-17. Financing of special improvements Assessment projects - Procedure -**
22 **Engineer report.**

23 When it is proposed to finance in whole or in part the construction of a project with a water
24 resource board receives a petition or approves a motion to construct a project with funds raised
25 through the collection of special assessments levied against lands and premises benefited by
26 construction and maintenance of such project, the water resource board shall examine the
27 proposed project, and if in its opinion, If the water resource board decides further proceedings
28 are warranted, it the board shall adopt a resolution and declare that it declaring constructing and
29 maintaining the proposed project is necessary to construct and maintain the project. The
30 resolution shall briefly state, identifying the nature and purpose of the proposed project, and
31 shall designate designating a registered engineer to assist the board. As soon as practicable,

1 the board shall publish the resolution in the newspaper of general circulation in each area in
2 which lands that reasonably may be condemned or subject to assessment for the project are
3 located. For the purpose of making examinations or surveys, the board or ~~its employees~~the
4 board's agents, after written notice to each landowner at the landowner's address as shown by
5 the tax rolls of the county in which the affected property is located, may enter upon any land on
6 which the proposed project is located or any other lands necessary to gain access. The
7 engineer shall prepare profiles, plans, ~~and specifications,~~ and total estimated costs of the
8 proposed project ~~and estimates of the total cost thereof.~~ The estimate of costs prepared by the
9 engineer ~~shall~~must include ~~acquisition of right~~the cost to acquire rights of way and ~~shall be in-~~
10 ~~sufficient detail to allow~~be sufficiently detailed for the board to determine the probable share of
11 the total costs ~~that will~~to be assessed against each of the affected landowners in the proposed
12 project assessment district.

13 **SECTION 10. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-16.1-18. Hearing on assessment project - Notice ~~Contents~~.**

- 16 1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
17 satisfying the requirements of section 61-16.1-21, the water resource board shall fix a
18 date and place for a public hearing on the proposed project. The place of hearing must
19 be in the vicinity of the proposed project and must be convenient and accessible for
20 the majority of the landowners subject to assessment for the project or whose property
21 is subject to condemnation for the proposed project.
- 22 2. The board shall cause a complete list of the benefits and assessments to be made,
23 setting forth each county, township, or city assessed in its corporate capacity as well
24 as each lot, piece, or parcel of land assessed; ~~the amount each is~~would be benefited
25 by the ~~improvement~~proposed project; and the amount assessed against each. At least
26 ten days before the hearing, the board shall file with the county auditor of each county
27 ~~or counties~~ in which the project is or will be located the list showing the percentage
28 assessment against each parcel of land benefited by the proposed project and the
29 approximate assessment in terms of money apportioned ~~thereto.~~ ~~Notice of the filing~~
30 ~~must be included in the notice of hearing.~~ Notice to each parcel.
- 31 3. The water resource board shall provide notice of the hearing which must contain:

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- 1 a. ~~Include a copy of the petition, if any, and the resolution of the board as well as;~~
- 2 b. ~~Specify the time and place where the board will conduct~~of the hearing. The notice-
3 of hearing ~~must specify the general nature;~~
- 4 c. ~~Identify the beginning, terminus, and general course~~ of the project as finally
5 determined by the engineer and the board. ~~The notice of hearing must also-~~
6 specify;
- 7 d. ~~Specify when and where votes concerning the proposed project may be filed. The-~~
8 :
- 9 e. ~~Include the~~ assessment list showing the percentage assessment against each
10 parcel of land benefited by the proposed project and the approximate
11 assessment in terms of money apportioned ~~thereto, along with a copy of the-~~
12 notice of the hearing, ~~must be to~~ each parcel;
- 13 f. ~~Be mailed with a ballot to vote on the proposed project~~ to each affected
14 landowner at the landowner's address as shown by the tax rolls of the county ~~or-~~
15 counties in which the affected property is located. The board may send the
16 ~~assessment list and~~ notice and ballot by regular mail attested by an affidavit of
17 mailing signed by the attorney or secretary of the board. ~~The board shall cause-~~
18 the notice of hearing to be; and
- 19 g. ~~Be published once a week for two consecutive weeks in the newspaper or-~~
20 newspapers of general circulation in the area in which the affected landowners-
21 reside ~~and in the official county newspaper of each county in which the benefited-~~
22 lands are located.
- 23 4. ~~The date set for the hearing must not be less than~~ at least twenty days after the mailing-
24 of the notice day the notice is mailed. A record of the hearing must be made by the
25 board, ~~including~~ include a list of affected landowners present in person or by agent,
26 and ~~the record must~~ be preserved in the minutes of the meeting. ~~Affected-~~
27 landowners, Each affected landowner and the governing body of any county, township,
28 or city to be assessed, must be informed at the hearing of the probable total cost of
29 the project ~~and their individual share, the share~~ of the cost the landowner or governing
30 body will be assessed, and the portion of ~~their~~ landowner or governing body's property,
31 if any, to be condemned for the project.

1 **SECTION 11. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-19. Voting on proposed projects - Notice of result.**

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

1 Any right of appeal begins to run on the date of publication of the notice. ~~As used in this section,~~
2 ~~"board" means water resource board.~~

3 **SECTION 12. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-16.1-20. Voting right or powers of landowners.**

6 ~~In order that there may be~~The allocation of voting rights among affected landowners on the
7 question of establishing a proposed project must provide a fair relationship between the
8 amount of liability for assessments and the power of objecting to the establishment of a
9 ~~proposed~~the project, the voting rights of affected landowners on the question of establishing the
10 project are as provided in this section. ~~The landowner or landowners of tracts of land affected~~
11 by the project. Affected landowners have one vote for each dollar of assessment that to which
12 the land is subject to or one vote for each dollar of the assessed valuation of land condemned
13 for the project, as determined in accordance with title 57. The governing body of any county,
14 township, or city to be assessed also has one vote for each dollar of assessment against
15 ~~such~~the county, township, or city. There may be only one vote for each dollar of assessment,
16 regardless of the number of owners of such a tract of land. Whereif there is more than one
17 owner of ~~such~~the land exists, the votes must be prorated among ~~them~~the owners in accordance
18 with each owner's property interest. A written power of attorney authorizes an agent to protest a
19 project on behalf of ~~any~~the affected landowner or landowners that executed the power of
20 attorney.

21 **SECTION 13. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 ~~61-16.1-21. Assessment of cost of project~~Calculating benefits and assessments -
24 Certification.

25 ~~Whenever~~

26 1. If the water resource board proposes to make any special assessment under the
27 provisions of this chapter, the board, prior to before the hearing required under section
28 61-16.1-18, shall inspect ~~any and~~ all lots and parcels of land; which may be subject to
29 assessment and shall determine from the inspection the particular lots and parcels of
30 lands which, in the opinion of the board, will be ~~especially~~ benefited by the
31 construction of the work for which the assessment is made ~~and~~. The board shall

- 1 ~~assess~~determine the proportion of the total cost of acquiring right of way and
2 constructing and maintaining ~~such improvement~~the project in accordance with, but not
3 exceeding, the benefits received ~~but not exceeding such benefits~~, against:
- 4 1. ~~Any~~ any county, township, or city, in its corporate capacity, which may be
5 benefited directly or indirectly ~~thereby~~.
- 6 2. ~~Any~~ and any lot, piece, or parcel of land which is directly benefited by ~~such~~
7 ~~improvement~~the project.
- 8 2. In determining benefits the board shall consider, among other factors, property values,
9 degree of improvement of properties, and productivity, ~~and the water management~~
10 ~~policy as expressed in section 61-16.1-15~~. Property belonging to the United States
11 ~~shall be~~ exempt from ~~such~~ assessment under this chapter, unless the United States
12 has provided for the payment of any assessment ~~which may be~~ levied against ~~its~~the
13 property for benefits received. Benefited property belonging to counties, cities, school
14 districts, park districts, and townships ~~shall not be~~ not exempt from ~~such~~ assessment
15 under this chapter, and political subdivisions whose property is ~~so~~ assessed shall
16 provide for the payment of ~~such~~the assessments, installments ~~thereof~~, and interest
17 ~~thereon~~, by the levy of taxes according to law. Any county, township, or city assessed
18 in its corporate capacity for benefits received shall provide for the payment of ~~such~~the
19 assessments, installments ~~thereof~~, and interest ~~thereon~~ from ~~its~~the political
20 subdivision's general fund or by levy of a general property tax against all the taxable
21 property ~~therein~~ in the political subdivision in accordance with law. ~~No tax limitation~~ Tax
22 limitations provided by any statute of this state ~~shall do not~~ apply to tax levies made by
23 ~~any such~~ a political subdivision for the purpose of paying any special assessments
24 ~~made in accordance with the provisions of~~ under this chapter. ~~There shall be attached~~
25 ~~to the list of assessments a~~
- 26 3. The board shall prepare a list identifying the assessments allocated to each lot and
27 parcel of land for the project. A certificate signed by a majority of the members of the
28 board certifying that the same is a true and correct assessment of the benefit
29 ~~therein~~ must be attached to the list and state the assessment in the list are based on a
30 correct determination of the benefits to the assessed land described to the best of

1 ~~their~~the members' judgment ~~and stating~~. The certificate also must identify the several
2 items of expense included in the assessment.

3 **SECTION 14. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
6 **assessments - Confirmation of assessment list - Filing.**

7 1. After entering an order establishing the project, the water resource board shall ~~cause-~~
8 ~~the assessment list to be published once each week for three successive weeks in the~~
9 ~~newspaper or newspapers of general circulation in the district and in the official county-~~
10 ~~newspaper of each county in which the benefited lands are located together with a~~
11 ~~notice of the time when, and place where, the board will meet to hear objections to any~~
12 ~~assessment by any interested party, or an agent or attorney for that party. The board~~
13 ~~also shall mail a copy of the notice of the hearing in an envelope clearly marked~~
14 ~~"ASSESSMENT NOTICE" to each affected landowner at the landowner's address as~~
15 ~~shown by the tax rolls of the county or counties in which the affected property is~~
16 ~~located.~~provide notice of a hearing at which the board will meet to hear objections to
17 the proposed assessments from any interested party or agent for an interested party.

18 The notice must:

- 19 a. Include a copy of the order establishing the project;
20 b. Specify the time and place of the hearing;
21 c. Identify the beginning, terminus, and general course of the project as finally
22 determined by the engineer and the board;
23 d. Include the assessment list showing the percentage assessment against each
24 parcel of land benefited by the proposed project and the approximate
25 assessment in terms of money apportioned;
26 e. Be mailed to each affected landowner at the landowner's address as shown by
27 the tax rolls of the county in which the affected property is located. The board
28 may send the assessment list and notice by regular mail attested by an affidavit
29 of mailing signed by the attorney or secretary of the board; and
30 f. Be published once a week for two consecutive weeks in the newspaper of
31 general circulation in the area in which the affected lands are located.

1 2. The date set for the hearing ~~may not~~must be ~~less than thirty~~at least twenty days after
2 the ~~mailing of the~~ notice is mailed. At the hearing, the board may ~~make such~~
3 ~~alterations in~~alter the assessments as ~~in its opinion may be~~the board deems just and
4 necessary to correct any error in the assessment but ~~must~~shall make the aggregate of
5 all assessments equal to either the total amount required to pay the entire cost of the
6 work for which the assessments are made, or the part of the cost to be paid by special
7 assessment. An assessment may not exceed the benefit as determined by the board
8 to the parcel of land or political subdivision assessed. The board then shall ~~then~~
9 confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate
10 ~~that the same~~stating the list is correct as confirmed by the board and shall file the list
11 in the office of the secretary.

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

14 **61-16.1-23. Appeal to department of water resources.**

15 ~~After~~Within twenty days after the hearing ~~provided for in~~meeting at which the water
16 ~~resource board approves the final assessment list required under~~ section 61-16.1-22, ~~affected;~~

17 1. Affected landowners and any political subdivision subject to assessment, having not
18 less than ~~twenty~~thirty-three percent of the possible votes as determined by section
19 61-16.1-20, ~~whewhich~~which believe the assessment was not made fairly or equitably or the
20 project is not located or designed properly, may appeal to the department of water
21 resources by petition, ~~within ten days after the hearing on assessments,~~ to ~~make a~~
22 review of the assessments and ~~to~~ examine the location and design of the proposed
23 project. Upon receipt of the petition the department shall examine the lands assessed
24 and the location and design of the proposed project, and if it appears the assessments
25 were not made equitably, the department may correct the assessments, and the
26 department's correction and adjustment of the assessment is final. If the department
27 believes the project was located or designed improperly, the department may order a
28 relocation and redesign that must be followed in the construction of the proposed
29 project.
30 2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the
31 costs of the department in the matter, any landowner or political subdivision claiming

1 the landowner or political subdivision will receive no benefit from the construction of a
2 new project may appeal that issue to the department ~~within ten days after the hearing~~
3 ~~on assessments~~. Upon an appeal by an individual landowner or political subdivision,
4 the department may determine whether there is any benefit to the landowner or
5 political subdivision, but not the specific amount of benefit. The determination of the
6 department regarding whether there is a benefit is final.

7 3. Before filing an appeal under this section, a landowner or political subdivision that
8 meets the threshold for filing an appeal under this section may request assistance
9 from the North Dakota mediation service to resolve grievances arising from the final
10 assessment list. If the North Dakota mediation service agrees to assist the aggrieved
11 person, the water resource board shall participate in good faith in the mediation.
12 Requesting assistance or engaging in mediation under this section is not a
13 prerequisite or a bar to appealing to the department under this section. Deadlines to
14 initiate appeals are not tolled by a person requesting assistance from the North Dakota
15 mediation service under this section.

16 **SECTION 16. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

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

1 ~~In no event shall any contract or contracts be awarded which exceed~~ A contract that
2 exceeds, by twenty percent or more, the estimated cost of the project as presented to and
3 approved by the affected landowners is prohibited.

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

6 **61-16.1-26. Reassessment of benefits.**

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

26 **SECTION 18. AMENDMENT.** Section 61-16.1-27 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-27. Correction of errors and mistakes in special assessments ~~–Requirements–~~**
29 **governing.**

30 If mathematical errors or other ~~such~~ mistakes occur in making any assessment ~~resulting and~~
31 result in a deficiency in that assessment, the board shall cause additional assessments to be

1 made in a manner substantially complying with chapter 40-26 as ~~it~~the chapter relates to special
2 assessments.

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

5 **61-16.1-28. Certification of assessments to county auditor.**

6 When a water resource board, by resolution, has caused special assessments to be levied
7 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
8 special assessments ~~shall~~must bear, ~~which.~~ The interest rate ~~shall~~may not exceed one and
9 one-half percent above the warrant rate. Interest on unpaid special assessments ~~shall~~must
10 commence on the date the assessments are ~~finally~~ confirmed finally by the board. Special
11 assessments may be certified and made payable in equal annual installments, the last of which
12 ~~shall~~must be due and payable not more than thirty years after the date of the warrants to be
13 paid. The secretary of the district shall certify to the county auditor of the county in which the
14 district is situated, or if the district embraces more than one county, to the county auditor of each
15 county in which district lands subject to ~~such~~the special assessments are situated, the total
16 amount assessed against ~~such~~ lands in that county and the proportion or percentage of ~~such~~the
17 amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district
18 also shall ~~also~~ file with the county auditor of each county in which district lands lie a statement
19 showing the cost of the project, the part ~~thereof~~of the cost, if any, ~~which will~~to be paid out of the
20 general taxes, and the part to be financed by special assessments. Funds needed to pay the
21 cost of maintaining a project may be raised in the same manner as funds were raised to meet
22 construction costs. If the project was financed in whole or in part through the use of special
23 assessments, the water resource board shall prorate the costs of maintaining ~~projects~~the
24 project in the same proportion as were the original costs of construction or, in the event a
25 reassessment of benefits has been adopted, the ~~costs shall be prorated~~board shall prorate
26 costs in accordance with the reassessment of benefits ~~as authorized by section 61-16.1-54.~~

27 **SECTION 20. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is
28 amended and reenacted as follows:

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

30 1. Drains may be laid along, within the limits of, or across any public road or highway, but
31 not to the injury of ~~such~~the road. ~~In instances where it is~~ lf, during the preparation of

1 the report required under section 61-16.1-17, a water resource board discovers it may
2 be necessary to run a drain across a highway, the water resource board shall notify
3 and solicit guidance from the department of transportation, the board of county
4 commissioners, or the board of township supervisors, as the case may be, when
5 ~~notified by the water resource board to do so,~~as soon as practicable. If the water
6 resource board determines the drain must be run across the highway after considering
7 any guidance received from the department of transportation, board of county
8 commissioners, or board of township supervisors, the department of transportation,
9 board of county commissioners, or board of township supervisors shall make
10 necessary openings through the road or highway at its own expense, ~~and shall build~~
11 ~~and keep in repair all required~~ after receiving notice of the water resource board's
12 determination. The cost to build, maintain, and repair the culverts or bridges must be
13 allocated as provided under section 61-16.1-43. In instances where drains are laid
14 along or within the rights of way of roads or highways, the drains shall be maintained
15 and kept open by and at the expense of the water resource district concerned.

16 2. A drain may be laid along any railroad when necessary, but not to the injury of the
17 railroad, ~~and when it is necessary to run a drain across the railroad,~~ if, during the
18 preparation of the report required under section 61-16.1-17, a water resource board
19 discovers it may be necessary to run a drain across a railroad, the water resource
20 board shall notify and solicit guidance from the railroad company as soon as
21 practicable. If the water resource board determines the drain must be run across the
22 railroad after considering any guidance received from the railroad company, the
23 railroad company, when notified ~~by the water resource board to do so~~of the water
24 resource board's determination, shall make the necessary opening through such
25 railroad, ~~shall~~ build the required bridges and culverts, and ~~shall~~ keep them in repair.

26 **SECTION 21. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-43. Construction of bridges and culverts - Costs.**

29 1. The water resource board shall construct ~~such~~any bridges or culverts over or in
30 connection with a drain as in its judgment may be necessary to furnish passage from
31 one part to another of any private farm or tract of land intersected by ~~such~~the drain.

1 The cost of ~~such construction shall~~constructing the bridge or culvert must be charged
2 as part of the cost of constructing the drain,~~and any such.~~ The bridge, or culvert, or
3 ~~passageway shall~~ must be maintained under the authority of the water resource board,
4 and the necessary expense ~~shall~~must be deemed a part of the cost of maintenance.

5 ~~Whenever~~

6 2. When any bridge or culvert is to be constructed on a county or township highway
7 system over and across or in connection with a drain, the water resource board shall
8 notify the county or township with authority for the highway and provide the county or
9 township reasonable time to review and provide input on the plans for the bridge or
10 culvert. The bridge or culvert must be maintained by the ~~water resource board, and the~~
11 ~~necessary expense must be deemed a part of the cost of maintenance~~county or
12 township and all necessary maintenance expenses must be borne forty percent by the
13 county and sixty percent by the water resource board, unless otherwise agreed upon
14 by the water resource board and the highway authority. If the highway authority and
15 the water resource board ~~denies a request for maintenance submitted by the county or~~
16 ~~township, the county or township~~cannot agree on the necessity or proper methodology
17 for maintaining the bridge or culvert, the requesting party may appeal the denial under
18 chapter 28-34. The cost of constructing such~~the~~ bridge or culvert shallmust be shared
19 in the following manner:

20 4. a. ~~The~~if funds are available, the state water commission may, ~~if funds are available,~~
21 ~~participate in accordance with such rules and regulations as it may~~
22 ~~prescribe~~according the commission's rules or policies. The remaining cost
23 ~~shall~~must be borne forty percent by the county and sixty percent by the district
24 ~~which has~~that created the need for ~~such~~the construction.

25 2. b. ~~If, however, moneys have not been made~~ funds are not available to the
26 ~~commission for participation in accordance with subsection 4,~~ then forty percent
27 of the cost of a bridge or culvert ~~shall~~must be paid by the county and sixty
28 percent ~~shall~~must be charged as the cost of the drain to the district.

29 3. ~~Where such bridges or culverts are~~

30 c. Upon request from the water resource board, the county shall request federal
31 emergency funds for the construction. If the bridge or culvert is constructed with

1 federal financial participation, including any federal emergency funds, the costs
2 exceeding the amount of the federal participation ~~shall~~must be borne by the
3 district and county according to the provisions of this section, ~~as the case may~~
4 ~~be~~.

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

7 **Assessment drain culverts.**

8 If, during the preparation of the report required under section 61-16.1-17 or during the
9 planning for maintenance or reconstruction of an existing assessment drain, a water resource
10 board discovers it may be necessary to install a culvert through a road not on the route of the
11 assessment drain, but which is within the assessment area and necessary for surface water to
12 reach the assessment drain, the water resource board shall notify and solicit guidance from the
13 department of transportation, board of county commissioners, or board of township supervisors,
14 as the case may be, as soon as practicable. If the water resource board determines the culvert
15 is necessary after considering any guidance received from the department of transportation,
16 board of county commissioners, or board of township supervisors, the department of
17 transportation, board of county commissioners, or board of township supervisors shall make
18 necessary openings through the road or highway at its own expense after receiving notice of
19 the water resource board's determination. The cost to build, maintain, and repair the culverts
20 must be allocated as provided under section 61-16.1-43.

21 **SECTION 23. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**
24 **Injunction - Definition.**

25 1. If a water resource board determines that an obstruction to ~~a~~an artificial drain has
26 been caused by the result of a natural occurrence, such as sedimentation or
27 vegetation, or by the negligent act or omission of a landowner or tenant, the board
28 shall notify the landowner by registered mail at the landowner's post-office address of
29 record. A copy of the notice also ~~also~~ must be sent to the tenant, if any. The notice
30 must specify the nature and extent of the obstruction, and the opinion of the board as
31 to its cause, and must state ~~that~~ if the obstruction is not removed within ~~such~~the period

- 1 as the board determines, but not less than fifteen days, the board shall procure
2 removal of the obstruction and assess the cost of the removal, or the portion the board
3 determines appropriate, against the property of the landowner responsible. The notice
4 also must ~~also~~ state that the affected landowner, within fifteen days of the date the
5 notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the
6 demand, the board shall set a hearing date within fifteen days from the date the
7 demand is received. In the event of an emergency, the board may apply immediately
8 ~~apply~~ to the appropriate district court for an injunction prohibiting a landowner or
9 tenant from maintaining an obstruction. Assessments levied under ~~the provisions of~~
10 this section must be collected in the same manner as other assessments authorized
11 by this chapter. If, in the opinion of the board, more than one landowner or tenant has
12 been responsible, the costs may be assessed on a pro rata basis in accordance with
13 the proportionate responsibility of the landowners. A landowner aggrieved by action of
14 the board under this section may appeal the decision of the board to the district court
15 of the county in which the land is located in accordance with the procedure provided in
16 section 28-34-01. A hearing ~~as provided for in~~under this section is not a prerequisite to
17 an appeal. If a complaint is frivolous in the discretion of the board, the board may
18 assess the costs of the frivolous complaint against the complainant. If the obstruction
19 is located in a road ditch, the timing and method of removal must be approved by the
20 appropriate road authority before the notice required by this section is given and
21 appropriate construction site protection standards must be followed.
- 22 2. For the purposes of this section, "an obstruction to a drain" means a natural or artificial
23 barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including
24 if the watercourse or~~whether or not the artificial~~ drain is located within a road ditch,
25 ~~which that~~ materially affects the free flow of waters in the watercourse or drain.
- 26 3. Following removal of an obstruction to a drain, either by a water resource board or by
27 a party complying with an order of a water resource board, the board may assess its
28 costs against the property of the responsible landowner.

29 **SECTION 24. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
2 **Jurisdiction.**

3 ~~An appeal may be taken to the district court from any~~An aggrieved person may appeal an
4 ~~order or decision of the~~water resource board by any person aggrieved to the district court of
5 ~~the county in which the land claimed to be affected adversely by the order or decision is located.~~
6 An appellant shall file an undertaking in the sum of two hundred dollars with ~~such~~any sureties
7 ~~as may be approved~~required by the clerk of the district court to which the appeal is taken. The
8 undertaking must be conditioned ~~that the appellant will prosecute~~on the appellant prosecuting
9 the appeal without delay and ~~will pay~~paying all costs adjudged against the appellant in the
10 district court. The undertaking must be in favor of the water resource board as obligee, and may
11 be sued on in the name of the obligee. ~~The appeal must be taken to the district court of the~~
12 ~~county in which the land claimed to be affected adversely by the order or decision appealed~~
13 ~~from is located and~~An appeal under this section is governed by the procedure provided in
14 section 28-34-01.

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

17 ~~— Available mediation services.~~

18 ~~— An aggrieved person may request assistance from the North Dakota mediation service to~~
19 ~~resolve grievances arising from an order or decision of a water resource board within thirty days~~
20 ~~of the order or decision. If the North Dakota mediation service agrees to assist the aggrieved~~
21 ~~person, the water resource board shall participate in good faith in the mediation. Requesting~~
22 ~~assistance or engaging in mediation under this section is not a prerequisite or a bar to~~
23 ~~appealing an order or decision of a water resource board. Deadlines to initiate appeals by the~~
24 ~~person requesting assistance from the North Dakota mediation service under this section are~~
25 ~~tolled upon submission of the request until the request is denied or mediation ends.~~

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

28 **Designation of lateral drain.**

29 A determination by a water resource board as to whether an existing or proposed drain is a
30 lateral drain is a conclusive determination when entered on the records of the board.

1 **SECTION 26.** A new section to chapter 61-16.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Notice of letting of contracts.**

4 After the recording of percentage assessments as provided in section 61-16.1-22, the board
5 shall give at least ten days' notice of the time and place where contracts will be let for the
6 construction of the drain. The notice must be published at least once in a newspaper having
7 general circulation in the county.

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

10 **Extension of time to contractors - Reletting unfinished part of contract.**

11 A water resource board may grant a reasonable extension of time for the completion of any
12 contract. If a board reasonably believes the work required under a contract will not be
13 completed by the agreed upon deadline, the board may relet any unfinished portion to the
14 lowest responsible bidder, and shall take security as before. The cost of completing the
15 unfinished portions over and above the contract price, and the expense of notices and reletting,
16 must be collected by the board from the parties first contracting. The board may not terminate a
17 contract without giving five days' notice to the contractor, provided the contractor may be found
18 or has a known place of residence in the county. The notice may be given to the contractor
19 personally or may be left at the contractor's place of residence.

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

22 **Procedure to construct or extend an assessment drain through or into two or more**
23 **counties.**

24 To construct or extend an assessment drain in two or more counties, a petition must be
25 presented to the several water resource boards for the area in which the drain will lie for the
26 establishment of the drain under this chapter. The boards shall hold a joint meeting and shall
27 determine the necessity or expediency of the establishment of the drain. To proceed with the
28 drain, the boards shall agree upon the proportion of damages and benefits to accrue to the
29 lands affected in each county, and for this purpose the boards shall consider the entire course
30 of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to
31 accrue to the lands in each county, the boards shall submit the points in controversy to the

1 department of water resources, and the department's decision is final. The boards may
2 apportion the cost of establishing and constructing the entire drain ratably and equitably upon
3 the lands in each county in proportion to the benefits to accrue to the county's lands. When the
4 boards have apportioned the costs, the boards shall make written reports of the apportionment
5 to the auditors of the several counties affected. The reports must show the portion of cost of the
6 entire drain to be paid by taxes upon the lands in each of the counties and must be signed by
7 the boards of all counties affected. Upon the filing of the reports, the several boards shall meet
8 and assess against the lands in each of the counties, ratably and equitably as provided by this
9 chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The
10 provisions of this chapter relating to drains within a single county govern the establishment,
11 construction, maintenance, repair, and cleanout of the drains.

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

14 **Drain warrants - Terms and amounts.**

15 Drain costs must be paid upon order of the board by warrants signed by the chairman and
16 one other member of the board. The warrants are payable from the proper drain fund and, upon
17 maturity, are receivable by the treasurer for drain assessments supporting the fund. The
18 warrants may be issued at any time after the order establishing the drain has become final and
19 after incurring liability to pay for drain work to be financed by drain assessments and in
20 anticipation of levy and collection of the assessments. Every warrant not made payable on
21 demand must specify the date when it becomes payable. Demand warrants not paid for want of
22 funds must be registered by the county treasurer or, if the water resource district treasurer is
23 custodian of the drain funds, the water resource district treasurer and bear interest at a rate
24 determined by the board, not exceeding eight percent per annum. Warrants of specified
25 maturities bear interest according to their provisions at a rate or rates resulting in an average
26 net interest cost not exceeding twelve percent per annum if sold at private sale, and may be
27 issued with interest coupons attached. There is no interest rate ceiling on warrants sold at
28 public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain
29 warrants must state upon their faces the purpose for which they are issued and the drain fund
30 from which they are payable. The warrants may be used to pay drain obligations, or may be
31 sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants

1 sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid
2 warrants issued for the acquisition of right of way or the construction of a drain, including all
3 incidental costs in connection with the acquisition or construction, must be funded by a bond
4 issue within one hundred eighty days from and after the filing of the assessment of all costs with
5 the county auditor as provided in section 61-16.1-28, but this requirement may not be construed
6 as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day
7 period.

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

10 **Settlement of unpaid warrants.**

11 A board of county commissioners may negotiate and execute a settlement with the owners
12 of drain warrants and pay the amount of the settlement from the general fund of the county if:

- 13 1. Drain warrants issued pursuant to the establishment of a drain in two or more counties
14 remain unpaid;
- 15 2. The amounts realized from the original assessments are not sufficient to pay the
16 warrants;
- 17 3. An additional assessment would be necessary to meet the deficit; and
- 18 4. The board finds the county has received benefits from the drain by reasons of public
19 health, convenience, or welfare and, as a result, may be liable for assessment or
20 reassessment and the credit of the county is or may be affected by the existence of
21 the outstanding and unpaid warrants.

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

24 **Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

25 If the board determines a drain, lateral drain, or ditch has been opened or established by a
26 landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall
27 notify the landowner by registered mail at the landowner's address of record. A copy of the
28 notice also must be sent to the tenant, if any. The notice must specify the nature and extent of
29 the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within
30 the period the board determines, but not less than fifteen days, the board shall procure the
31 closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board

1 determines, against the property of the landowner responsible. The notice also must state the
2 affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a
3 hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within
4 fifteen days from the date the demand is received. In the event of an emergency, the board may
5 apply immediately to the appropriate district court for an injunction prohibiting the landowner or
6 tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section
7 must be collected in the same manner as other assessments authorized by this chapter. If, in
8 the opinion of the board, more than one landowner or tenant has been responsible, the costs
9 may be assessed on a pro rata basis in accordance with the proportionate responsibility of the
10 landowners. A landowner aggrieved by action of the board under this section may appeal the
11 decision of the board to the district court of the county in which the land is located in
12 accordance with the procedure provided for in section 28-34-01. A hearing as provided for in
13 this section is not a prerequisite to an appeal.

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

16 **Reconveyance of land no longer required for drainage.**

17 When land acquired for drainage is no longer required for drainage, the board of county
18 commissioners may reconvey the land to the present owner of the adjacent property if the
19 present owner of the adjacent property surrenders all warrants issued in payment of the land or
20 repays the amount of cash paid for the land.

21 **SECTION 33.** A new section to chapter 61-16.1 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Sinking funds and bonds.**

24 A water resource board shall establish a sinking fund for each issue of bonds, and the fund
25 must consist of all drain assessments made for the bonds, all warrants funded, all assessments
26 for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not
27 actually expended for the drain, the reserve fund authorized for purchase of tax delinquent
28 lands affected by the drain, all general tax levies for payment of obligations of the drain, and any
29 other moneys that may be appropriated to the sinking fund. Separate sinking funds must be
30 provided for each separate drain for which bonds have been issued. Until the purpose of the

1 sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose
2 other than payment of the bonds for which the fund was created.

3 **SECTION 34.** A new section to chapter 61-16.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Existing obligations and regulations.**

6 Except as specified, amendments to this chapter do not affect the validity of any valid
7 outstanding warrants, bonds, or other obligations of drainage districts, and all sinking funds
8 created for the payment of these obligations continue in force until the liquidation of the
9 obligations. All valid rules adopted by any board of county commissioners or board of drainage
10 commissioners remain in full force and effect until altered or repealed by the board.

11 **SECTION 35. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the
12 North Dakota Century Code is amended and reenacted as follows:

13 g. If the subsurface water management system will discharge into the watershed
14 area of an assessment drain, inclusion of the relevant property into the
15 assessment district for the assessment drain in accordance with the benefits the
16 property receives, provided the property is not assessed already for the
17 assessment drain. The water resource district may include the new property into
18 the assessment district, and determine the benefits and assessment amounts
19 under ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment
20 of benefit proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided
21 the property is not assessed already for the assessment drain.

22 **SECTION 36. REPEAL.** Section 61-16.1-01 and chapter 61-21 of the North Dakota Century
23 Code are repealed.

Amendments to SB 2036

1. Section 1 – This amendment was proposed by the Water Resource Districtss Association. Currently, other political subdivisions are authorized to invest funds with an array of financial products identified by NDCC 21-06-07. Because water resource boards are not specifically named with the other political subdivisions in this statute, water resource boards are not authorized to invest in these financial products like other political subdivisions and must comply with NDCC 21-04, generally. This proposed amendment simply authorizes water resource boards to invest public funds in financial products that have better rates of returns like other political subdivisions.
2. Section 2 – No change to Engrossed SB 2036.
3. Section 3 and Section 23 – This amendment was proposed by the Dept. of Water Resources. Currently, a statute exists at NDCC 61-01-23 which allows cities, counties, WRD’s, and federal agencies to investigate obstructions due to ice and to remove the obstruction to prevent damage or pollution. Currently, NDCC 61-16.1-51 provides upstream landowners and WRD’s with a remedy for obstructions caused by downstream landowners. Engrossed SB 2036 expanded NDCC 61-01-23 to provide upstream landowners and WRD’s with a remedy for natural obstructions. However, because NDCC 61-01-23 also provides obstruction removal authority to cities, counties, and federal agencies, and because the obstruction remedies provided to landowners and WRD’s would fit better in NDCC 61-16.1-53, Section 3 removes any alteration to NDCC 61-01-23 and instead adds the remedy for natural obstructions to NDCC 61-16.1-53.
4. Section 3 – No change to Engrossed SB 2036.
5. Section 4 – This amendment was proposed by the Dept. of Water Resources. This amendment adds definitions to the words “Benefited Property” and “Benefits.”
6. Section 5 – No change to Engrossed SB 2036.
7. Section 6 – No change to Engrossed SB 2036.
8. Section 7 – No change to Engrossed SB 2036.
9. Section 8 – No change to Engrossed SB 2036.
10. Section 9 – No change to Engrossed SB 2036.
11. Section 10 – No change to Engrossed SB 2036.
12. Section 11 – No change to Engrossed SB 2036.
13. Section 12 – No change to Engrossed Sb 2036.

14. Section 13 – No change to Engrossed SB 2036.
15. Section 14 – No change to Engrossed SB 2036.
16. Section 15 and Section 25 – This amendment was proposed by the Water Resource Districts Association. Engrossed SB 2036 provides any “aggrieved person” with the right to request that the North Dakota mediation service assist in resolving any grievance arising from an order or decision of a water resource board. This could apply to any order or decision, including those that result from a landowner vote, and the mediation would toll deadlines for appeal. Currently, under NDCC 61-16.1-23, a group of landowners can appeal the final assessment list of any assessment project if they believe it was done unfairly. This amendment proposes to delete the broad mediation language that tolls appeal deadlines created under Section 25, and moves that mediation language to NDCC 61-16.1-23 scoped to final assessment lists. The language was modified so that it does not toll the deadline to appeal, so that the mediation and the appeal can run concurrently.

*Please note that WRD’s suggested lowering the threshold for appeal to 20% of landowners instead of 33%.

17. Section 16 – No change to Engrossed SB 2036
18. Section 17 – No change to Engrossed SB 2036.
19. Section 18 – No change to Engrossed SB 2036.
20. Section 19 – No change to Engrossed SB 2036.
21. Section 20 – No change to Engrossed SB 2036.
22. Section 21 – This amendment was proposed by the Water Resource Districts Association. Under current law, for road openings along assessment drains, the local cost of construction is split between the water resource district, which covers sixty (60%) percent of the cost, and the county, which covers forty (40%) percent of the cost. In practice, significant costs associated with maintenance are covered under the same split. This amendment clarifies that the cost of construction and maintenance are both covered under the same 60/40 split. The Association of Counties has approved this amendment.
23. Section 22 – No change to Engrossed SB 2036.
24. Section 24 – No change to Engrossed SB 2036.
25. Section 26 – No change to Engrossed SB 2036.
26. Section 27 - No change to Engrossed SB 2036.
27. Section 28 - No change to Engrossed SB 2036.

28. Section 29 - No change to Engrossed SB 2036.
29. Section 30 – No change to Engrossed SB 2036.
30. Section 31 – No change to Engrossed SB 2036.
31. Section 32 - No change to Engrossed SB 2036.
32. Section 33 - No change to Engrossed SB 2036.
33. Section 34 - No change to Engrossed SB 2036.
34. Section 35 – No change to Engrossed SB 2036.
35. Section 36 – No change to Engrossed SB 2036.