

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to amend and reenact sections 61-16.1-53, 61-16.1-53.1, 61-32-07, and
2 61-32-08 of the North Dakota Century Code, relating to appeals of removal or closing of a
3 noncomplying dam, dike, or other device and drains.

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

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

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

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

1 emergency, the board may immediately apply to the appropriate district court for an injunction
2 prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other
3 device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied
4 under this section must be collected in the same manner as other assessments authorized by
5 this chapter. If, in the opinion of the board, more than one landowner or tenant has been
6 responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of
7 the landowners. ~~A person aggrieved by action of the board under this section may appeal the~~
8 ~~decision of the board to the district court of the county in which the land is located in~~
9 ~~accordance with the procedure provided in section 28-34-01. A hearing as provided for in this~~
10 ~~section is not prerequisite to an appeal.~~

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

13 **61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of**
14 **noncomplying dams, dikes, or other devices for water conservation, flood control,**
15 **regulation, and watershed improvement.**

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

29 If the board fails to investigate and make a determination concerning the complaint within a
30 reasonable time, not exceeding one hundred twenty days, the person filing the complaint may
31 file the complaint with the state engineer. The state engineer, without reference to

1 chapter 28-32, shall cause the investigation and determination to be made, either by action
2 against the board, or by personally conducting the investigation and personally making the
3 determination. If the state engineer determines that a dam, dike, or other device has been
4 constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by
5 the board, the state engineer shall take one of these three actions:

- 6 1. Notify the landowner by ~~registered~~certified mail at the landowner's post-office address
7 of record;
- 8 2. Return the matter to the jurisdiction of the board along with the investigation report; or
- 9 3. Forward the dam, dike, or other device complaint and investigation report to the state's
10 attorney.

11 If the state engineer decides to notify the landowner, the notice must specify the nature and
12 extent of the noncompliance and must state that if the dam, dike, or other device is not removed
13 within such reasonable time as the state engineer determines, but not less than thirty days, the
14 state engineer shall procure the removal of the dam, dike, or other device and assess the cost
15 of removal against the property of the responsible landowner. The notice from the state
16 engineer must state that, within fifteen days of the date the notice is mailed, the affected
17 landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the
18 state engineer shall set a hearing date within fifteen days from the date the demand is received.

19 If, in the opinion of the state engineer, more than one landowner or tenant has been
20 responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of
21 the landowners. Upon assessment of costs, the state engineer shall certify the assessment to
22 the county auditor of the county where the noncomplying dam, dike, or other device is located.

23 The county auditor shall extend the assessment against the property assessed. Each
24 assessment must be collected and paid as other property taxes are collected and paid.

25 Assessments collected must be deposited with the state treasurer and are hereby appropriated
26 out of the state treasury and must be credited to the contract fund established by section
27 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal
28 the decision of the state engineer to the district court in accordance with chapter 28-32. A
29 hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

30 If the state engineer, after completing the investigation required under this section, decides
31 to return the matter to the board, a complete copy of the investigation report must be forwarded

1 to the board and it must include the nature and extent of the noncompliance. Upon having the
2 matter returned to its jurisdiction, the board shall carry out the state engineer's decision in
3 accordance with the terms of this section.

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

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

17 ~~The authority granted in this section may only be exercised for dams, dikes, or other~~
18 ~~devices constructed after August 1, 1999.~~

19 **SECTION 3. AMENDMENT.** Section 61-32-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction -**
22 **Frivolous complaints.**

23 Only a landowner experiencing flooding or adverse effects from an unauthorized drain
24 constructed before January 1, 1975, may file a complaint with the water resource board. Any
25 person may file a complaint about an unauthorized drain constructed after January 1, 1975.
26 Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly
27 investigate and make a determination of the facts with respect to the complaint. If the board
28 determines that a drain, lateral drain, or ditch has been opened or established by a landowner
29 or tenant contrary to this title or any rules adopted by the board, the board shall notify the
30 landowner by ~~registered~~certified mail at the landowner's post-office address of record. A copy of
31 the notice must also be sent to the tenant, if known. The notice must specify the nature and

1 extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed
2 or filled within a reasonable time as the board determines, but not less than fifteen days, the
3 board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost
4 of the closing or filling, or the portion the board determines, against the property of the
5 landowner responsible. The notice must also state that the affected landowner, within fifteen
6 days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon
7 receipt of the demand, the board shall set a hearing date within fifteen days from the date the
8 demand is received. In the event of an emergency, the board may immediately apply to the
9 appropriate district court for an injunction prohibiting the landowner or tenant from constructing
10 or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain.
11 Assessments levied under this section must be collected in the same manner as assessments
12 authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or
13 tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the
14 responsibility of the landowners. ~~A person aggrieved by action of the board under this section~~
15 ~~may appeal the decision of the board to the district court of the county in which the land is~~
16 ~~located in accordance with the procedure provided in section 28-34-01. A hearing as provided~~
17 ~~for in this section is not a prerequisite to an appeal.~~ If, after the first complaint, in the opinion of
18 the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint
19 against the complainant.

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

22 **61-32-08. Appeal of board decisions - State engineer review - Closing of**
23 **noncomplying drains.**

24 The board shall make the decision required by section 61-32-07 within a reasonable time,
25 but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify
26 all parties of its decision by certified mail. The board's decision may be appealed to the state
27 engineer by any aggrieved party. The appeal to the state engineer must be made within thirty
28 days from the date notice of the board's decision has been received. The appeal must be made
29 by submitting a written notice to the state engineer which must specifically set forth the reason
30 why the board's decision is erroneous. The appealing party shall also submit copies of the
31 written appeal notice to the board and to the nonappealing party. Upon receipt of this notice the

1 board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to
2 procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle
3 the appeal by conducting an independent investigation and making an independent
4 determination of the matter. The state engineer may enter property affected by the complaint for
5 the purpose of investigating the complaint.

6 If the board fails to investigate and make a determination concerning the complaint within a
7 reasonable time, but not to exceed one hundred twenty days, the person filing the complaint
8 may file such complaint with the state engineer. The state engineer shall, without reference to
9 chapter 28-32, cause the investigation and determination to be made, either by action against
10 the board, or by personally conducting the investigation and personally making the
11 determination.

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

- 15 1. Notify the landowner by ~~registered~~certified mail at the landowner's post-office address
16 of record;
- 17 2. Return the matter to the jurisdiction of the board along with the investigation report; or
- 18 3. Forward the drainage complaint and investigation report to the state's attorney.

19 If the state engineer decides to notify the landowner, the notice must specify the nature and
20 extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed
21 or filled within such reasonable time as the state engineer shall determine, but not less than
22 thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or
23 ditch and assess the cost thereof, against the property of the landowner responsible. The notice
24 from the state engineer must state that the affected landowner may, within fifteen days of the
25 date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the
26 demand, the state engineer shall set a hearing date within fifteen days from the date the
27 demand is received. If, in the opinion of the state engineer, more than one landowner or tenant
28 has been responsible, the costs may be assessed on a pro rata basis in proportion to the
29 responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the
30 assessment to the county auditor of the county where the noncomplying drain, lateral drain, or
31 ditch is located. The county auditor shall extend the assessment against the property assessed.

1 Each assessment must be collected and paid as other taxes are collected and paid.
2 Assessments collected must be deposited with the state treasurer and are hereby appropriated
3 out of the state treasury and must be credited to the contract fund established by section
4 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this
5 section may appeal the decision of the state engineer to the district court in accordance with
6 chapter 28-32. A hearing by the state engineer as provided for in this section shall be a
7 prerequisite to such an appeal.

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

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

18 In addition to the penalty imposed by the court in the event of conviction under this statute,
19 the court shall order the drain, lateral drain, or ditch closed or filled within such reasonable time
20 period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is
21 not closed or filled within the time prescribed by the court, the court shall procure the closing or
22 filling of the drain, lateral drain, or ditch, and assess the cost thereof against the property of the
23 landowner responsible, in the same manner as other assessments under chapter 61-16.1 are
24 levied. If, in the opinion of the court, more than one landowner or tenant has been responsible,
25 the costs may be assessed on a pro rata basis in proportion to the responsibility of the
26 landowners.

27 ~~The authority granted in this section may only be exercised for drainage constructed after~~
28 ~~January 1, 1987.~~