

Introduced by

Representatives Schatz, Bellew, Dockter, Hauck, VanWinkle

Senators Luick, Paulson

1 A BILL for an Act to amend and reenact ~~sections 28-34-01 and~~section 61-16.1-54 of the North
2 Dakota Century Code, relating to the procedural requirements governing appeals from a ~~local~~
3 ~~governing body and~~ water resource board.

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

5 ~~— **SECTION 1. AMENDMENT.** Section 28-34-01 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~— **28-34-01. Appeals from local governing bodies – Procedures.**~~

8 ~~— This section, to the extent that it is not inconsistent with procedural rules adopted by the~~
9 ~~North Dakota supreme court, governs any appeal provided by statute from the decision of a~~
10 ~~local governing body, except those court reviews provided under sections 2-04-11 and~~
11 ~~40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board,~~
12 ~~commission, resource or conservation district, or other political subdivision. Each appeal is~~
13 ~~governed by the following procedure:~~

14 ~~— 1.— The notice of appeal must be filed with the clerk of the court within thirty days after the~~
15 ~~decision of the local governing body has been served on the affected party. A copy of~~
16 ~~the notice of appeal must be served on the local governing body in the manner~~
17 ~~provided by rule 4 of the North Dakota Rules of Civil Procedure.~~

18 ~~— 2.— The appellee shall prepare and file a single copy of the record on appeal with the~~
19 ~~court. Within thirty days, or such longer time as the court by order may direct, after the~~
20 ~~notice of appeal has been filed in the court, and after the deposit by the appellant of~~
21 ~~the estimated cost of a transcript of the evidence, the local governing body shall~~
22 ~~prepare and file in the office of the clerk of the court in which the appeal is pending the~~
23 ~~original or a certified copy of the entire proceedings before the local governing body, or~~
24 ~~such abstract of the record as may be agreed upon and stipulated by the parties,~~

1 including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or
2 memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact
3 submitted to the local governing body, and the decision of the local governing body in
4 the proceedings. If the notice of appeal specifies that no exception or objection is
5 made to the local governing body's findings of fact, and that the appeal is concerned
6 only with the local governing body's conclusions based on the facts found by it, the
7 evidence submitted at the hearing before the local governing body must be omitted
8 from the record filed in the court. The court may permit amendments or additions to
9 the record to complete the record.

10 ~~3. If the court determines on its own motion or if an application for leave to adduce~~
11 ~~additional evidence is made to the court in which an appeal from a determination from~~
12 ~~a local governing body is pending, and it is shown to the satisfaction of the court that~~
13 ~~such additional evidence is material and that there are reasonable grounds for the~~
14 ~~failure to adduce such evidence in the hearing or proceeding had before the local~~
15 ~~governing body, or that such evidence is material to the issues involved and was~~
16 ~~rejected or excluded by the local governing body, the court may order that such~~
17 ~~additional evidence be taken, heard, and considered by the local governing body on~~
18 ~~such terms and conditions as the court may determine. After considering the additional~~
19 ~~evidence, the local governing body may amend or modify its decision and shall file~~
20 ~~with the court a transcript of the additional evidence together with its new or modified~~
21 ~~decision, if any.~~

22 **SECTION 1. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
25 **Jurisdiction.**

26 1. An appeal may be taken to the district court from any order or decision of the water
27 resource board by any person aggrieved within thirty days after service of notice of an
28 order or decision by publication in the manner provided by rule 4 of the North Dakota
29 Rules of Civil Procedure. An appellant shall file an undertaking in the sum of two
30 hundred dollars with such sureties as may be approved by the clerk of the district court
31 to which the appeal is taken. The undertaking must be conditioned that the appellant

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

7 ~~2. The district court may award costs and reasonable attorney's fees to appellants when~~
8 ~~three or more aggrieved individuals have joined in an appeal from a decision of the~~
9 ~~water resource board and the court rules in favor of the appellants.~~