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Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1095

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. ~~The~~Any aggrieved party may appeal the board's decision ~~may be appealed~~ to the state engineer ~~by any aggrieved party~~. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer, which must specifically set forth the reason why ~~the appealing party believes~~ the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint ~~for the purpose of investigating~~to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be made, either by action against the board~~,~~ or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.

3. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

~~1.~~ a. Notify the landowner by certified mail at the landowner's post-office address of record;

~~2.~~ b. Return the matter to the jurisdiction of the board along with the investigation report; or

~~3.~~ c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other device is not removed within ~~such~~a reasonable time as determined by the state engineer ~~determines~~, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property ~~of the responsible landowner~~. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and ~~are hereby appropriated out of the state treasury and must be~~ credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court ~~in accordance with~~under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to ~~such~~ an appeal.

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

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

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

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

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

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

61-32-08. Appeal of board decisions - State engineer review - Closing of noncomplying drains~~ - Continuing appropriation~~.

1. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. ~~The~~Any aggrieved party may appeal the board's decision ~~may be appealed~~ to the state engineer ~~by any aggrieved party~~. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received.~~ If a decision is not made within one hundred twenty days, the appeal to the state engineer must be made within one hundred fifty days of the complaint.~~ The appeal must be made by submitting a written notice to the state engineer, which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to ~~the~~all nonappealing ~~party~~parties. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint ~~for the purpose of investigating~~to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file ~~such~~the complaint with the state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board~~,~~ or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.
3. If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:

~~1.~~ a. Notify the landowner by certified mail at the landowner's post-office address of record;

~~2.~~ b. Return the matter to the jurisdiction of the board along with the investigation report; or

~~3.~~ c. Forward the drainage complaint and investigation report to the state's attorney.

4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the drain, lateral drain, or ditch is not closed or filled within ~~such~~a reasonable time as determined by the state engineer ~~shall determine~~, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~, against the responsible landowner's property ~~of the landowner responsible~~. The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand~~,~~ in writing~~,~~ a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and ~~are hereby appropriated out of the state treasury and must be~~ credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court ~~in accordance with~~under chapter 28-32. A hearing by the state engineer as provided for in this section ~~shall be~~is a prerequisite to ~~such~~ an appeal.

~~6.~~5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report ~~shall~~must be forwarded to the board and it ~~shall~~must include the nature and extent of

the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision ~~in accordance with~~under the terms of this section.

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

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