

**FIRST ENGROSSMENT
with House Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2294

Introduced by

Senators Thompson, Fischer

Representatives Nelson, Schmidt

1 A BILL for an Act to amend and reenact sections 61-16.1-12.1, 61-16.1-18, and 61-16.1-19 of
2 the North Dakota Century Code, relating to notice and approval of proposed water projects.

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

4 **SECTION 1. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies**
7 **for certain improvements.** A water resource board may enter ~~into~~ an agreement with any
8 federal or state agency, or any combination thereof, for the construction of a project, under the
9 terms of which the contract for the work is to be let by the federal or state agency or any
10 combination thereof. If under the terms of the agreement at least fifty percent of the total cost
11 of constructing the project is to be paid by the agency or agencies and if any portion of the cost
12 of the project is to be paid by the levy of special assessments, the board may by resolution
13 create a project assessment district for the purpose of levying special assessments to finance
14 the amount that the district will be obligated to pay in accordance with the agreement, over and
15 above any other funds which are on hand and properly available for that purpose. The
16 assessment district must be of a size and form as to include all properties which in the
17 judgment of the board, after consultation with a registered engineer designated by the board for
18 that purpose, will be benefited by the construction of the proposed project, and the board shall
19 direct the engineer to prepare a map showing the boundaries of the proposed assessment
20 district. The board shall by resolution declare the necessity of the project, set forth the general
21 nature and purpose of the proposed project, estimate the total cost of the project, and the
22 approximate amount or fraction of the cost which the district will be obligated to pay under the
23 agreement, and the fact that this amount, or a lesser amount as the board may specify, is
24 proposed to be paid by the levy of special assessments upon property within the assessment

1 district determined to be benefited by the project. The board shall cause the resolution of
2 necessity together with a copy of the map showing the boundaries of the assessment district
3 and a notice stating the date and time by which the owners of any property liable to be specially
4 assessed for the proposed project must file ~~their votes on the proposed~~ written protests against
5 the project with the secretary of the board to be mailed to each landowner affected by the
6 proposed project as determined by the tax rolls of the county in which the affected property is
7 located. The board may send the material by certified mail or by regular mail attested by an
8 affidavit of mailing signed by the attorney or secretary of the board. The notice must also set
9 forth the time and place where the board ~~shall~~ will meet to determine ~~whether~~ the sufficiency of
10 any protests against the project is approved. The notice must ~~also~~ be published once a week
11 for two consecutive weeks in a newspaper of general circulation in the district and once a week
12 for two consecutive weeks in the official county newspaper of each county in which the
13 benefited lands are located. Within ten days after the date of the first publication, each affected
14 landowner as shown by the tax rolls of the county or counties in which the proposed project is
15 located must be mailed a notice of the hearing by registered mail at the landowner's address as
16 shown by the records. The notice must be accompanied by a three-inch [76.20-millimeter] by
17 five-inch [127-millimeter] card containing a message printed in large red block letters in
18 substantially the same as the following: If you do not file a protest, your votes will be
19 considered to be in favor of the proposed project. Affected landowners, and the governing
20 body of any county, township, or city to be assessed, have thirty days after the date of the first
21 publication to file their protests with the secretary of the board. Once the deadline for filing
22 protests has been reached, no more protests may be filed and no person may withdraw a
23 protest. Within five days after the first ~~mailing~~ publication of the resolution, the board shall
24 cause a copy of the resolution to be personally served upon any county, city, or township, in its
25 corporate capacity which may be benefited directly or indirectly from the construction of the
26 proposed project and upon any county which may become liable for any deficiency in the fund
27 to be created for the project, by delivering a copy of the resolution to any member of the
28 governing body thereof. The notice must be accompanied by a three-inch [76.20-millimeter] by
29 five-inch [127-millimeter] card containing a message printed in large red block letters in
30 substantially the same as the following: If you do not file a protest, your votes will be
31 considered to be in favor of the proposed project. The meeting must be held not less than thirty

1 days after the ~~mailing~~ first publication of the resolution, at which time the board shall determine
2 ~~whether the project is approved~~ the sufficiency of the written protests. If the board finds the
3 protests filed within thirty days after the first publication of the resolution contain the names of
4 the owners of a majority by taxable value of the land subject to assessment for the construction
5 of the proposed project, then the protests bar further proceedings. If the board finds ~~that fifty~~
6 ~~percent or more of the total votes filed are against a proposed project, then the board may not~~
7 ~~proceed further with the proposed project~~. If the board finds ~~that less than fifty percent of votes~~
8 ~~filed are against the proposed project~~ the protests to be insufficient, the board may proceed
9 with the project. In any assessment district created under this section the board may dispense
10 with all other requirements of this chapter, other than those stated in this section. After the
11 contract for the work has been let, the board may issue warrants on the fund of the project for
12 the total amount of the cost thereof, and the board, without holding the hearing required by
13 section 61-16.1-18, shall proceed to determine and levy any assessments against property
14 benefited by the project and prepare an assessment list all in accordance with the procedures
15 required by sections 61-16.1-21 through 61-16.1-24. The provisions of sections 61-16.1-25
16 through 61-16.1-36 are applicable to the assessments and the special warrants issued
17 pursuant to this section.

18 **SECTION 2. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
19 amended and reenacted as follows:

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

1 in terms of money apportioned thereto. Notice of the filing must be included in the notice of
2 hearing. Notices of the hearing must contain a copy of the resolution of the board as well as
3 the time and place where the board will conduct the hearing. The notice of hearing must
4 specify the general nature of the project as finally determined by the engineer and the board.
5 The notice of hearing must also specify when and where votes concerning the proposed project
6 may be filed and an assessment list showing the percentage assessment against each parcel
7 of land benefited by the proposed project and the approximate assessment in terms of money
8 apportioned thereto. The board shall cause the notice of hearing to be published once a week
9 for two consecutive weeks in the newspaper or newspapers of general circulation in the area in
10 which the affected landowners reside and in the official county newspaper of each county in
11 which the benefited lands are located. Within ten days after the date of the first publication,
12 each affected landowner as shown by the tax rolls of the county or counties in which the
13 proposed project is located must be mailed a notice of the hearing by registered mail at the
14 landowner's address as shown by the records. The notice must be accompanied by a
15 three-inch [76.20-millimeter] by five-inch [127-millimeter] card containing a message printed in
16 large red block letters in substantially the same as the following: If you do not file a protest,
17 your votes will be considered to be in favor of the proposed project. The date set for the
18 hearing must not be less than twenty days after the ~~mailing~~ first publication of the notice. A
19 record of the hearing must be made by the board, including a list of affected landowners
20 present in person or by agent, and the record must be preserved in the minutes of the meeting.
21 Affected landowners, and the governing body of any county, township, or city to be assessed,
22 must be informed at the hearing of the probable total cost of the project and their individual
23 share of the cost and the portion of their property, if any, to be condemned for the project.

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

26 **61-16.1-19. Voting on proposed projects.** At the hearing, the affected landowners,
27 and any county, township, or city to be assessed, must also be informed when and where votes
28 concerning the proposed project may be filed. Affected landowners, and the governing body of
29 any county, township, or city to be assessed, have thirty days after the date of the hearing to
30 file their votes with the secretary of the water resource board concerning the project. Once the
31 deadline for filing votes has been reached, no more votes may be filed and no person may

1 withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time
2 must be in writing. When the votes have been filed and the deadline for filing votes has
3 passed, the board shall immediately determine whether the project is approved. If the board
4 finds that fifty percent or more of the total votes ~~filed~~ are as determined by section 61-16.1-20,
5 have protested against the proposed project, then the vote constitutes a bar against proceeding
6 further with the project. If the ~~board finds that the number of votes filed against the proposed~~
7 ~~project is less than fifty percent of the votes filed~~ total number of valid protests is found to be
8 insufficient in number, the board shall issue an order establishing the proposed project and may
9 proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to
10 contract or provide for the construction or maintenance of the project in substantially the
11 manner and according to the forms and procedure provided in title 40 for the construction of
12 sewers within municipalities. The board may enter into an agreement with any federal or state
13 agency under the terms of which the contract for the project is to be let by the federal agency,
14 the state agency, or a combination thereof. In projects where there is an agreement that a
15 party other than the board will let the contract, the board may dispense with all of the
16 requirements of title 40. Upon making an order establishing or denying establishment of a
17 project, the board shall publish notice of the order in a newspaper of general circulation in the
18 area in which the affected landowners reside and in the official county newspaper of each
19 county in which the benefited lands are located. Any right of appeal begins to run on the date
20 of publication of the notice. As used in this section, "board" means water resource board.