

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 new sections to chapter 61-16.1 of the North
 2 Dakota Century Code, relating to water resource boards; to amend and reenact sections
 3 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, 61-16.1-17,
 4 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23, 61-16.1-24,
 5 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 61-16.1-54, and
 6 subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota Century Code, relating
 7 to water resource boards and procedures for assessment projects undertaken by water
 8 resource boards; and to repeal section 61-16.1-01 and chapter 61-21 of the North Dakota
 9 Century Code, relating to water resource districts, water resource boards, assessment
 10 procedures and requirements, and drains.

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

12 **SECTION 1. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is
 13 amended and reenacted as follows:

14 **61-01-06. Watercourse and waterway - DefinitionDefinitions.**

15 1. A watercourse entitled to the protection of the law is constituted if there is a sufficient
 16 natural and accustomed flow of water to form and maintain a distinct and a defined
 17 channel. The supply of water is not required to be continuous or from a perennial living
 18 source. The criteria for constituting a watercourse are satisfied if the flow arises
 19 periodically from natural causes and reaches a plainly defined channel of a permanent
 20 character. If requested by a water resource board, the department of water resources
 21 shall determine whether a watercourse is constituted.

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

1 **SECTION 2. AMENDMENT.** Section 61-01-23 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-01-23. Investigation or removal of obstructions in channelwatercourse.**

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

7 1. Upon a request from a landowner affected by a natural or artificial obstruction to a
8 watercourse, the state water commissiondepartment of water resources, any water
9 resource district, any municipality, any board of county commissioners, and any
10 federal agency authorized to construct works for prevention ofto prevent damage by
11 floods or for abatement ofabate stream pollution, mayshall notify, and upon the entity's
12 own volition, may notify, the owner of lands lying adjacent to the obstructed
13 watercourse as follows:

14 a. The owner of adjacent lands shall remove the obstruction within thirty days of
15 receiving the notice; and
16 b. If the obstruction is not removed within the thirty days, the entity that sent the
17 notice may enter uponthe owner's lands lying adjacent to such the watercourse to
18 investigate or remove, or cause to be removed from the bed, channel, or banks
19 of such the watercourse any obstructions whichthat prevent or hinder the free
20 flow of water or passage of ice therein, at the owner's expense. However, such
21 entry

22 2. Entry upon adjacent lands under this section must be by the most accessible route
23 and the entering ageneentity is responsible to the landowner for any damage.

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

26 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

27 Notwithstanding section 61-05-02, an irrigation district may not be created if the primary
28 purpose of the district is to provide drainage benefits to residents of the district. A drainage
29 project proposed, undertaken, approved, or subject to assessment by an irrigation district also
30 is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an

1 irrigation district may not impact the authority of a water resource board to assess for drainage
2 projects under chapter 61-16.1 or 61-24.

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

5 **61-16.1-02. Definitions.**

6 ~~In~~For purposes of this chapter, unless the context or subject matter otherwise
7 providesrequires:

- 8 1. "Affected landowners" means landowners whose land is subject to special
9 assessment or condemnation for a project.
- 10 2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~
11 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~
12 ~~nature or description constructed for the purpose of drainage, including dikes and~~
13 ~~appurtenant works, which area~~ drain financed in whole or in part by special
14 assessment. This definition may include more than one watercourse or artificial
15 channel constructed for the purpose of drainage when the watercourses or channels
16 drain land within a practical drainage area.
- 17 3. "Cleaning out and repairing a drain" means deepening and widening a drain and
18 removing obstructions or sediment, and any repair necessary to return the drain to a
19 satisfactory and useful condition.
- 20 4. "Commission" means the state water commission.
- 21 ~~4.5.~~ "Conservation" means planned management of water resources to prevent
22 exploitation, destruction, neglect, or waste.
- 23 ~~5.6.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
24 requisite proceedings regarding the removal of obstructions to a drain, removal of a
25 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
26 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
27 engineering fees, including investigation and determination costs; compliance
28 inspections; ~~and~~ necessary technical memorandum and deficiency review; and all
29 costs associated with any hearing conducted by a district, including preparation and
30 issuance of any findings of fact and any final closure order.
- 31 ~~6.7.~~ "District" means a water resource district.

1 ~~7-8.~~ "Drain" means any natural watercourse opened, or proposed to be opened, and
2 improved for drainage, and any artificial channel constructed for drainage. The term
3 includes dikes and appurtenant works and may include more than one watercourse or
4 artificial channel when the watercourses or channels drain land within a practical
5 drainage area.

6 9. "Frivolous" means allegations and denials in any complaint filed with a district made
7 without reasonable cause and not in good faith.

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

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

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

18 ~~9-13.~~ "Water resource board" or "board" means the water resource district's board of
19 managers.

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

22 **61-16.1-09. Powers of water resource board.**

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

- 24 1. Sue and be sued in the name of the district.
- 25 2. Exercise the power of eminent domain as follows:
- 26 a. Except as permitted under subdivision b, the board shall comply with title 32 for
27 the purpose of acquiring and securing by eminent domain any rights, titles,
28 interests, estates, or easements necessary or proper to carry out the duties
29 imposed by this chapter, and particularly to acquire the necessary rights in land
30 for the construction of dams, flood control projects, and other water conservation,
31 distribution, and supply works of any nature and to permit the flooding of lands,

1 and to secure the right of access to such dams and other devices and the right of
2 public access to any waters impounded thereby.

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

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

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

12 [1] Sending the landowner an appraisal and written offer for just
13 compensation, which includes a specific description of the exact
14 location of the right of way, by certified mail or commercial
15 delivery requiring a signed receipt, and receiving the signed
16 receipt or documentation of constructive notice.

17 [2] Sending the landowner a written request for a meeting by
18 certified mail or commercial delivery requiring a signed receipt if
19 there is no agreement regarding compensation or no response to
20 the written offer within fifteen days of receipt, and receiving the
21 signed receipt or documentation of constructive notice.

22 [3] Sending the landowner a written notice, by certified mail or
23 commercial delivery requiring a signed receipt, of intent to take
24 possession of the right of way if there is no agreement regarding
25 compensation or no response to the written request for a
26 meeting within thirty days of receipt, and receiving the signed
27 receipt or documentation of constructive notice.

28 (2) Any written communication to the landowner must include contact
29 information for responding to the board and a description of the required
30 negotiation timeline.

- 1 (3) A district may not include or utilize any reference to quick take eminent
2 domain during negotiations to acquire the necessary easement for a right of
3 way. If formal negotiation efforts fail, the district shall request approval from
4 the board of county commissioners of the county in which the right of way is
5 located to take possession of the right of way by quick take eminent domain.
6 After receiving the request, the county commissioners shall hold a public
7 meeting and give the landowner thirty days' notice of the meeting to allow
8 the landowner to attend. After receiving verification from the district that
9 there has been no reference or threat of quick take eminent domain by the
10 district during negotiations, the commissioners shall vote on whether to
11 approve the taking of the easement for a right of way using quick take
12 eminent domain. If the county commissioners approve the use of quick take
13 eminent domain by a majority vote, the district may take immediate
14 possession of the right of way, but not a blanket easement, if the district files
15 an affidavit by the chairman of the water resource board which states the
16 district has fulfilled the required negotiation steps and deposits the amount
17 of the written offer with the clerk of the district court of the county in which
18 the right of way is located.
- 19 (4) Within thirty days after notice has been given in writing to the landowner by
20 the clerk of the district court that a deposit has been made for the taking of a
21 right of way as authorized in this subsection, the owner of the property taken
22 may appeal to the district court by serving a notice of appeal upon the
23 acquiring agency, and the matter must be tried at the next regular or special
24 term of court with a jury unless a jury be waived, in the manner prescribed
25 for trials under chapter 32-15.
- 26 (5) If ownership of a right of way has not terminated, ownership of a right of way
27 acquired under this subdivision terminates automatically when the district no
28 longer needs the right of way for the purpose for which it was acquired.
- 29 3. Accept funds and property or other assistance, financial or otherwise, from federal,
30 state, and other public or private sources for the purposes of aiding the construction or
31 maintenance of water conservation, distribution, and flood control projects; and

- 1 cooperate and contract with the state or federal government, or any department or
2 agency thereof, or any municipality within the district, in furnishing assurances and
3 meeting local cooperation requirements of any project involving control, conservation,
4 distribution, and use of water.
- 5 4. Procure the services of engineers and other technical experts, and employ an attorney
6 ~~or attorneys~~ to assist, advise, and act for it in its proceedings.
- 7 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all
8 dams and water conservation and management devices of every nature and water
9 channels, and to control and regulate the same and all reservoirs, artificial lakes, and
10 other water storage devices within the district.
- 11 6. Maintain and control the water levels and the flow of water in the bodies of water and
12 streams involved in water conservation and flood control projects within the district and
13 regulate streams, channels, drains, or watercourses and the flow of water ~~therein~~
14 them by changing, widening, deepening, ~~or straightening the same~~, or otherwise
15 improving the use and capacity thereof; or by cleaning out and repairing a drain.
- 16 7. Regulate and control water for the prevention of floods and flood damages by
17 deepening, widening, straightening, or diking the channels or floodplains of any stream
18 or watercourse within the district, and construct reservoirs or other structures to
19 impound and regulate such waters.
- 20 8. Make rules and regulations concerning the management, control, regulation, and
21 conservation of waters and prevent the pollution, contamination, or other misuse of the
22 water resources, streams, or bodies of water included within the district.
- 23 9. Do all things reasonably necessary and proper to preserve the benefits to be derived
24 from the conservation, control, and regulation of the water resources of this state.
- 25 10. Construct, operate, and maintain recreational facilities, including beaches, swimming
26 areas, boat docking and landing facilities, toilets, wells, picnic tables, trash
27 receptacles, and parking areas, and to establish and enforce rules and regulations for
28 the use thereof.
- 29 11. Have, in addition to any powers provided in this chapter, the authority to construct an
30 assessment drain in accordance with the ~~procedures and provisions~~requirements of
31 this chapter ~~61-24~~.

- 1 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in
2 its corporate name for its use and control both real and personal property and
3 easements and rights of way within or without the limits of the district for all purposes
4 authorized by law or necessary to the exercise of any other stated power.
- 5 13. Convey, sell, dispose of, or lease personal and real property of the district as provided
6 by this chapter.
- 7 14. Authorize and issue warrants to finance construction of water conservation and flood
8 control projects, assess benefited property for part or all of the cost of such projects,
9 and require appropriations and tax levies to maintain sinking funds for construction
10 warrants on a cash basis at all times.
- 11 15. Borrow money within the limitations imposed by this chapter for projects herein
12 authorized and pledge security for the repayment of such loans.
- 13 16. Order or initiate appropriate legal action to compel the entity responsible for the
14 maintenance and repair of any bridge or culvert to remove from under, within, and
15 around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris,
16 and any artificial block which hinders or decreases the flow of water through such
17 bridge or culvert.
- 18 17. Order or initiate appropriate legal action to compel the cessation of the destruction of
19 native woodland bordering within two hundred feet [60.96 meters] of that portion of a
20 riverbank subject to overflow flooding that will cause extensive property damage, or in
21 the alternative, order, that, if such destruction is permitted, the party or parties
22 responsible for the destruction must, when the board has determined that such
23 destruction will cause excessive property damage from overflow flooding due to the
24 erosion or blocking of the river channel, plant a shelterbelt which meets the
25 specifications of the board. In the event the native woodland within such area has
26 already been destroyed, the board may, in its discretion, order the planting of a
27 shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of
28 such river channel where overflow flooding has caused extensive property damage.
29 For purposes of this subsection, the words "riverbank" and "river channel" relate to
30 rivers as defined in the United States geological survey base map of North Dakota,
31 edition of 1963. The provisions of this subsection shall not be construed to limit,

1 impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local
2 entity to construct and maintain any flood control, irrigation, recreational, or municipal
3 or industrial water supply project.

4 18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or
5 section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when
6 such zoning is required to regulate and enforce the placement, erection, construction,
7 reconstruction, repair, and use of buildings and structures to protect and promote the
8 health, safety, and general welfare of the public within a floodplain area. In the event
9 such zoning authority fails to act or does not exist, the board may request the state
10 water commission to assist it in a study to determine and delineate the floodplain area.
11 Upon completion of such study, the board shall make suitable recommendations for
12 the establishment of a floodplain zone to all zoning authorities and the governing
13 bodies of all political subdivisions having jurisdiction within the floodplain area.

14 19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate,
15 maintain, and repair sanitary and storm sewer systems, or combinations thereof,
16 including sewage and water treatment plants, and regulate the quantity of sewage
17 effluent discharged from municipal lagoons; and contract with the United States
18 government, or any department or agency thereof, or any private or public corporation
19 or limited liability company, the government of this state, or any department, agency,
20 or political subdivision thereof, or any municipality or person with respect to any such
21 systems.

22 20. Develop water supply systems, store and transport water, and provide, contract for,
23 and furnish water service for domestic, municipal, and rural water purposes, irrigation,
24 milling, manufacturing, mining, metallurgical, and any and all other beneficial uses,
25 and fix the terms and rates therefor. Each district may acquire, construct, operate, and
26 maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines,
27 tunnels, and any and all works, facilities, improvements, and property necessary
28 therefor.

29 21. Coordinate proposals for installation, modification, or construction of culverts and
30 bridges in an effort to achieve appropriate sizing and maximum consistency of road
31 openings. The department of transportation, railroads, counties, and townships shall

1 cooperate with the districts in this effort. Each district shall also consider the possibility
2 of incorporating appropriate water control structures, where appropriate, as a part of
3 such road openings.

4 22. Plug abandoned water wells and participate in cost-sharing arrangements with water
5 well owners to plug water wells to protect aquifers from pollution or depletion, maintain
6 pressure, and prevent damage to surrounding property.

7 23. Have, in addition to any powers provided in this chapter, the authority to conduct
8 weather modification operations in accordance with the procedures and provisions of
9 chapter 61-04.1.

10 24. Establish, deepen, widen, and improve drains; and extend drains as necessary to
11 provide a suitable outlet or reasonably drain lands within a practical drainage area.

12 25. Install artificial subsurface drainage systems.

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

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

16 If lands assessed for drainage benefits are not contiguous to the drain, the water resource
17 board may exercise eminent domain to acquire a right of way easement to the drain over the
18 land of others. The right of way, when acquired, is the property of the water resource district in
19 which the lands are located. The board may issue warrants in a sum sufficient to pay the
20 damages assessed for the right of way. The warrants must be drawn upon the proper county
21 treasurer or, if the water resource district treasurer is custodian of the drain funds, water
22 resource district treasurer, and are payable out of drain funds in the hands of the treasurer
23 which have been collected for the construction of the drain for which the right of way is sought.

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

26 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

27 1. A water resource board may undertake the snagging, clearing, and maintaining of
28 natural watercourses and the debris removal of bridges and low-water crossings. The
29 board may finance the project in whole or in part with funds raised through the
30 collection of a special assessment levied against the land and premises benefited by
31 the project. The benefits of a project must be determined in the manner provided in

1 section ~~61-16.1-17~~61-16.1-18. Revenue from an assessment under this section may
2 not be used for construction of a drain or reconstruction or maintenance of an existing
3 assessment drain. Any question as to whether the board is maintaining a natural
4 watercourse or is constructing a drain or reconstructing or maintaining an existing
5 assessment drain must be resolved by the department of water resources. All
6 provisions of this chapter apply to assessments levied under this section except:

- 7 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
8 agricultural lands and may not exceed fifty cents annually for each five hundred
9 dollars of taxable valuation of nonagricultural property; ~~and~~.
- 10 b. If the assessment is for a project costing less than one hundred thousand dollars,
11 no action is required for the establishment of the assessment district or the
12 assessments except the board must approve the project and assessment by a
13 vote of two-thirds of the members and the board of county commissioners of the
14 county in which the project is located must approve and levy the assessments to
15 be made by a vote of two-thirds of its members.

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

20 (2) The board of each water resource district containing lands benefited by a
21 project must approve the project and assessment by a vote of two-thirds of
22 its members. The board of county commissioners in each county that
23 contains lands benefited by a project must approve and levy the
24 assessment to be made by a vote of two-thirds of its members.

25 (3) If a project and assessment is not approved by all affected water resource
26 boards and county commission boards, the board of each water resource
27 district and the board of county commissioners of each county shall meet to
28 ensure all common water management problems are resolved pursuant to
29 section 61-16.1-10. In addition, the water resource board that undertakes
30 the project may proceed with the project if the board finances the cost of the
31 project and does not assess land outside the boundaries of the district.

1 c. All revenue from an assessment under this section must be exhausted before a
2 subsequent assessment covering any portion of lands subject to a prior
3 assessment may be levied.

4 2. Before an assessment may be levied under this section, a public hearing must be held
5 and attended by a quorum of the affected water resource boards and a quorum of the
6 affected boards of county commissioners. The hearing must be preceded by notice as
7 to date, time, location, and subject matter published in the official newspaper in the
8 county or counties in which the proposed assessment is to be levied. The notice must
9 be published at least ten days but not more than thirty days before the public hearing.

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

12 **61-16.1-15. ~~Financing project~~Initiating project financed through revenue bonds,**
13 **general taxes, or special assessments - Apportionment of benefits~~Bond required.~~**

14 A water resource board shall ~~have the authority,~~ either upon request or by its own motion,
15 ~~to~~may acquire needed interest in property and provide for the cost of construction, alteration,
16 repair, operation, and maintenance of a project through issuance of improvement warrants or
17 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
18 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
19 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
20 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
21 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~
22 ~~benefited by the project in proportion to and in accordance with benefits accruing thereto. The~~
23 ~~board shall assess the proportion of the cost of the project, or the part of the cost to be financed~~
24 ~~with funds raised through levy and collection of special assessments which any lot, piece, or~~
25 ~~parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or~~
26 ~~township which is benefited thereby. In determining assessments, the water resource board~~
27 ~~shall carry out to the maximum extent possible the water management policy of this chapter that~~
28 ~~upstream landowners must share with downstream landowners the responsibility to provide for~~
29 ~~the proper management of surface waters.~~A request under this section must be in writing and
30 be accompanied by a bond in a sum the water resource board deems sufficient to pay all
31 expenses of the board related to the petition in case the petition is denied. If the proposed

1 project is an assessment drain, the request must identify the starting point, terminus, and
2 general course of the proposed drain and be signed by at least two owners of property that
3 would be drained by the proposed drain. If among the leading purposes of the proposed drain
4 are benefits to the health, convenience, or welfare of the residents of any city, the petition must
5 be signed by a sufficient number of the property owners of the city to satisfy the board there is a
6 public demand for the drain. If a petition under this section is approved by voters under section
7 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay
8 any expenses incurred by the board related to the petition.

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

11 **61-16.1-17. Financing of special improvementsAssessment projects - Procedure -**
12 **Engineer report.**

13 ~~When it is proposed to finance in whole or in part the construction of a project with a~~
14 ~~water resource board receives a petition or approves a motion to construct a project with funds raised~~
15 ~~through the collection of special assessments levied against lands and premises benefited by~~
16 ~~construction and maintenance of such project, the water resource board shall examine the~~
17 ~~proposed project, and if in its opinion, If the water resource board decides further proceedings~~
18 ~~are warranted, itthe board shall adopt a resolution and declare that itdeclaring constructing and~~
19 ~~maintaining the proposed project is necessary to construct and maintain the project. The~~
20 ~~resolution shall briefly state, identifying the nature and purpose of the proposed project, and~~
21 ~~shall designatedesignating a registered engineer to assist the board. As soon as practicable,~~
22 ~~the board shall publish the resolution in the newspaper of general circulation in each area in~~
23 ~~which lands that reasonably may be condemned or subject to assessment for the project are~~
24 ~~located. For the purpose of making examinations or surveys, the board or its employeesthe~~
25 ~~board's agents, after written notice to each landowner at the landowner's address as shown by~~
26 ~~the tax rolls of the county in which the affected property is located, may enter upon any land on~~
27 ~~which the proposed project is located or any other lands necessary to gain access. The~~
28 ~~engineer shall prepare profiles, plans, and specifications, and total estimated costs of the~~
29 ~~proposed project and estimates of the total cost thereof. The estimate of costs prepared by the~~
30 ~~engineer shallmust include acquisition of rightthe cost to acquire rights of way and shall be in-~~
31 ~~sufficient detail to allowbe sufficiently detailed for the board to determine the probable share of~~

1 the total costs that ~~will~~ be assessed against each of the affected landowners in the proposed
2 project assessment district.

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

5 **61-16.1-18. Hearing on assessment project - Notice –Contents.**

- 6 1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
7 satisfying the requirements of section 61-16.1-21, the water resource board shall fix a
8 date and place for a public hearing on the proposed project. The place of hearing must
9 be in the vicinity of the proposed project and must be convenient and accessible for
10 the majority of the landowners subject to assessment for the project or whose property
11 is subject to condemnation for the proposed project.
- 12 2. The board shall cause a complete list of the benefits and assessments to be made,
13 setting forth each county, township, or city assessed in its corporate capacity as well
14 as each lot, piece, or parcel of land assessed; the amount each ~~is~~ would be benefited
15 by the ~~improvement~~ proposed project; and the amount assessed against each. At least
16 ten days before the hearing, the board shall file with the county auditor of each county
17 ~~or counties~~ in which the project is or will be located the list showing the percentage
18 assessment against each parcel of land benefited by the proposed project and the
19 approximate assessment in terms of money apportioned ~~thereto~~. ~~Notice of the filing~~
20 ~~must be included in the notice of hearing.~~ Notice to each parcel.
- 21 3. The water resource board shall provide notice of the hearing which must contain:
- 22 a. Include a copy of the petition, if any, and the resolution of the board as well as;
- 23 b. Specify the time and place where the board will conduct of the hearing. ~~The notice~~
24 ~~of hearing must specify the general nature;~~
- 25 c. Identify the beginning, terminus, and general course of the project as finally
26 determined by the engineer and the board. ~~The notice of hearing must also~~
27 ~~specify;~~
- 28 d. Specify when and where votes concerning the proposed project may be filed. ~~The~~
29 ~~;~~
- 30 e. Include the assessment list showing the percentage assessment against each
31 parcel of land benefited by the proposed project and the approximate

1 assessment in terms of money apportioned thereto, ~~along with a copy of the~~
2 ~~notice of the hearing, must be to~~ each parcel;

3 f. Be mailed with a ballot to vote on the proposed project to each affected
4 landowner at the landowner's address as shown by the tax rolls of the county or
5 counties in which the affected property is located. The board may send the
6 ~~assessment list and notice~~ and ballot by regular mail attested by an affidavit of
7 mailing signed by the attorney or secretary of the board. ~~The board shall cause~~
8 ~~the notice of hearing to be;~~ and

9 g. Be published once a week for two consecutive weeks in the newspaper or
10 newspapers of general circulation in the area in which the affected landowners
11 reside and in the official county newspaper of each county in which the benefited
12 lands are located.

13 4. The date set for the hearing must not be less than at least twenty days after the mailing
14 of the notice day the notice is mailed. A record of the hearing must be made by the
15 board, ~~including~~ include a list of affected landowners present in person or by agent,
16 ~~and the record must be preserved in the minutes of the meeting. Affected~~
17 ~~landowners,~~ Each affected landowner and the governing body of any county, township,
18 or city to be assessed, must be informed at the hearing of the probable total cost of
19 the project ~~and their individual share,~~ the share of the cost the landowner or governing
20 body will be assessed, and the portion of ~~their~~ landowner or governing body's property,
21 if any, to be condemned for the project.

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

24 **61-16.1-19. Voting on proposed projects - Notice of result.**

25 At the hearing on an assessment project, the affected landowners, and any county,
26 township, or city to be assessed, must also be informed when and where votes concerning the
27 proposed project may be filed. Affected landowners, and the governing body of any county,
28 township, or city to be assessed, have thirty days after the date of the hearing to file their votes
29 for or against the project with the secretary of the water resource board ~~concerning the project.~~
30 If a vote is mailed to the secretary, the vote is timely if the vote is received within the voting
31 period. During the voting period, ballots may not be opened and votes may not be counted.

1 Once the deadline for filing votes has been reached, ~~no more votes may be filed and no person~~
2 ~~may withdraw a vote~~votes may not be filed or withdrawn. Any withdrawal of a vote concerning
3 the proposed project before that time must be in writing. When ~~the votes have been filed and~~
4 the deadline for filing votes has passed, the board immediately shall ~~immediately~~ determine
5 whether the project is approved. If the board finds that fifty percent or more of the total votes
6 filed are against the proposed project, ~~then~~ the vote constitutes a bar against proceeding further
7 with the project. If the board finds ~~that~~ the number of votes filed against the proposed project is
8 less than fifty percent of the votes filed, the board shall issue an order establishing the proposed
9 project and ~~may proceed~~, after complying with the requirements of sections 61-16.1-21 and
10 61-16.1-22, ~~to~~may contract or provide for the construction or maintenance of the project in
11 substantially the manner and according to the forms and procedure provided in title 40 for the
12 construction of sewers within municipalities. The board may enter into an agreement with any
13 federal or state agency under the terms of which the contract for the project is to be let by the
14 federal agency, the state agency, or ~~a combination thereof~~both. ~~In projects in which~~If there is an
15 ~~agreement that~~for a party other than the board ~~will~~to let the contract, the board may dispense
16 with all ~~of~~ the requirements of title 40. Upon making an order establishing a project or ~~denying~~
17 ~~establishment of~~determining the vote bars establishing a project, the board shall publish notice
18 of the order or determination in a newspaper of general circulation in the area in which the
19 ~~affected landowners reside and in the official county newspaper of each county in which the~~
20 ~~benefited~~ lands are located. The notice must advise affected landowners of their right to appeal.
21 Any right of appeal begins to run on the date of publication of the notice. ~~As used in this section,~~
22 "board" means ~~water resource board~~.

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

25 **61-16.1-20. Voting right or powers of landowners.**

26 ~~In order that there may be~~The allocation of voting rights among affected landowners on the
27 question of establishing a proposed project must provide a fair relation~~relationship~~ between the
28 amount of liability for assessments and the power of objecting to the establishment of a
29 ~~proposed~~the project, ~~the voting rights of affected landowners on the question of establishing the~~
30 ~~project are as provided in this section. The landowner or landowners of tracts of land affected~~
31 ~~by the project.~~ Affected landowners have one vote for each dollar of assessment ~~that~~to which

1 the land is subject to or one vote for each dollar of the assessed valuation of land condemned
2 for the project, as determined in accordance with title 57. The governing body of any county,
3 township, or city to be assessed also has one vote for each dollar of assessment against
4 ~~such~~the county, township, or city. There may be only one vote for each dollar of assessment,
5 regardless of the number of owners of ~~such~~a tract of land. ~~Where~~If there is more than one
6 owner of ~~such~~the land exists, the votes must be prorated among ~~them~~the owners in accordance
7 with each owner's property interest. A written power of attorney authorizes an agent to protest a
8 project on behalf of ~~any~~the affected landowner ~~or landowners~~that executed the power of
9 attorney.

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

12 **61-16.1-21. Assessment of cost of project**Calculating benefits and assessments -
13 Certification.

14 ~~Whenever~~

15 1. ~~If the water resource board proposes to make any special assessment under the~~
16 ~~provisions of this chapter, the board, prior to~~before the hearing required under section
17 61-16.1-18, shall inspect ~~any and~~ all lots and parcels of land; which may be subject to
18 assessment and shall determine from the inspection the particular lots and parcels of
19 lands which, in the opinion of the board, will be ~~especially~~ benefited by the
20 construction of the work for which the assessment is made ~~and~~. The board shall
21 ~~assess~~determine the proportion of the total cost of acquiring right of way and
22 constructing and maintaining ~~such improvement~~the project in accordance with, but not
23 exceeding, the benefits received ~~but not exceeding such benefits, against:~~

24 ~~4.~~ Any any county, township, or city, in its corporate capacity, which may be
25 benefited directly or indirectly ~~thereby~~.

26 ~~2.~~ Any and any lot, piece, or parcel of land which is directly benefited by ~~such~~
27 ~~improvement~~the project.

28 2. In determining benefits the board shall consider, among other factors, property values,
29 degree of improvement of properties, and productivity, ~~and the water management~~
30 ~~policy as expressed in section 61-16.1-15~~. Property belonging to the United States
31 ~~shall be~~is exempt from ~~such~~ assessment under this chapter, unless the United States

1 has provided for the payment of any assessment ~~which may be levied against its~~the
2 property for benefits received. Benefited property belonging to counties, cities, school
3 districts, park districts, and townships ~~shall not be~~not exempt from such assessment
4 under this chapter, and political subdivisions whose property is so assessed shall
5 provide for the payment of suchthe assessments, installments thereof, and interest
6 ~~thereon~~, by the levy of taxes according to law. Any county, township, or city assessed
7 in its corporate capacity for benefits received shall provide for the payment of suchthe
8 assessments, installments thereof, and interest ~~thereon~~ from itsthe political
9 subdivision's general fund or by levy of a general property tax against all the taxable
10 property ~~therein~~in the political subdivision in accordance with law. ~~No tax limitation~~Tax
11 limitations provided by any statute of this state ~~shall~~do not apply to tax levies made by
12 any sucha political subdivision for the purpose of paying any special assessments
13 ~~made in accordance with the provisions of~~under this chapter. ~~There shall be attached~~
14 ~~to the list of assessments a~~

- 15 3. The board shall prepare a list identifying the assessments allocated to each lot and
16 parcel of land for the project. A certificate signed by a majority of the members of the
17 board certifying that the same is a true and correct assessment of the benefit
18 therein must be attached to the list and state the assessment in the list are based on a
19 correct determination of the benefits to the assessed land described to the best of
20 ~~their~~the members' judgment ~~and stating~~. The certificate also must identify the several
21 items of expense included in the assessment.

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

24 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
25 **assessments - Confirmation of assessment list - Filing.**

- 26 1. After entering an order establishing the project, the water resource board shall ~~cause~~
27 ~~the assessment list to be published once each week for three successive weeks in the~~
28 ~~newspaper or newspapers of general circulation in the district and in the official county~~
29 ~~newspaper of each county in which the benefited lands are located together with a~~
30 ~~notice of the time when, and place where, the board will meet to hear objections to any~~
31 ~~assessment by any interested party, or an agent or attorney for that party. The board~~

1 also shall mail a copy of the notice of the hearing in an envelope clearly marked
2 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as
3 shown by the tax rolls of the county or counties in which the affected property is
4 located; provide notice of a hearing at which the board will meet to hear objections to
5 the proposed assessments from any interested party or agent for an interested party.

6 The notice must:

7 a. Include a copy of the order establishing the project;

8 b. Specify the time and place of the hearing;

9 c. Identify the beginning, terminus, and general course of the project as finally
10 determined by the engineer and the board;

11 d. Include the assessment list showing the percentage assessment against each
12 parcel of land benefited by the proposed project and the approximate
13 assessment in terms of money apportioned;

14 e. Be mailed to each affected landowner at the landowner's address as shown by
15 the tax rolls of the county in which the affected property is located. The board
16 may send the assessment list and notice by regular mail attested by an affidavit
17 of mailing signed by the attorney or secretary of the board; and

18 f. Be published once a week for two consecutive weeks in the newspaper of
19 general circulation in the area in which the affected lands are located.

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

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

3 **61-16.1-23. Appeal to department of water resources.**

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

6 1. Affected landowners and any political subdivision subject to assessment, having not
7 less than ~~twenty~~thirty-three percent of the possible votes as determined by section
8 61-16.1-20, ~~who~~which believe the assessment was not made fairly or equitably or the
9 project is not located or designed properly, may appeal to the department of water
10 resources by petition, ~~within ten days after the hearing on assessments,~~ to make a
11 review of the assessments and to examine the location and design of the proposed
12 project. Upon receipt of the petition the department shall examine the lands assessed
13 and the location and design of the proposed project, and if it appears the assessments
14 were not made equitably, the department may correct the assessments, and the
15 department's correction and adjustment of the assessment is final. If the department
16 believes the project was located or designed improperly, the department may order a
17 relocation and redesign that must be followed in the construction of the proposed
18 project.

19 2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the
20 costs of the department in the matter, any landowner or political subdivision claiming
21 the landowner or political subdivision will receive no benefit from the construction of a
22 new project may appeal that issue to the department ~~within ten days after the hearing~~
23 ~~on assessments.~~ Upon an appeal by an individual landowner or political subdivision,
24 the department may determine whether there is any benefit to the landowner or
25 political subdivision, but not the specific amount of benefit. The determination of the
26 department regarding whether there is a benefit is final.

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

29 **61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

30 After the requirements of this chapter have been satisfied and a contract and bond for any
31 work for which a special assessment is to be levied have been approved by the water resource

1 board, the board may direct special assessments to be levied for the payment of appropriate
2 costs, and the secretary shall certify to the board the items of total cost to be paid by special
3 assessments so far as ~~they~~the costs have been ascertained. The certificate shallmust include
4 the estimated construction cost under the terms of any contract; for the project; a reasonable
5 allowance for the cost of extra work ~~which~~that may be authorized under the plans and
6 specifications; acquisition of right of way; engineering, fiscal agents' and attorney's fees for any
7 services in connection with the authorization and financing of the ~~improvement~~project; cost of
8 publication of required notices; and printing of improvement warrants; cost necessarily paid for
9 damages caused by ~~such~~the improvement; interest during the construction period; and all
10 expenses incurred in making the improvement and levy of assessments.

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

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

16 **61-16.1-26. Reassessment of benefits.**

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

1 long as bonds payable out of ~~such~~the fund remain unpaid and moneys are not available in
2 ~~such~~the fund to pay all ~~such~~the bonds in full, with interest. Costs of maintenance must be
3 prorated in accordance with any adopted plan for reassessment of benefits ~~that has been~~
4 ~~adopted~~.

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

7 **61-16.1-27. Correction of errors and mistakes in special assessments –~~Requirements~~**
8 **~~governing.~~**

9 If mathematical errors or other ~~such~~ mistakes occur in making any assessment ~~resulting and~~
10 result in a deficiency in that assessment, the board shall cause additional assessments to be
11 made in a manner substantially complying with chapter 40-26 as ~~it~~the chapter relates to special
12 assessments.

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

15 **61-16.1-28. Certification of assessments to county auditor.**

16 When a water resource board, by resolution, has caused special assessments to be levied
17 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid
18 special assessments ~~shall~~must bear, ~~which.~~ The interest rate ~~shall~~may not exceed one and
19 one-half percent above the warrant rate. Interest on unpaid special assessments ~~shall~~must
20 commence on the date the assessments are ~~finally~~ confirmed finally by the board. Special
21 assessments may be certified and made payable in equal annual installments, the last of which
22 ~~shall~~must be due and payable not more than thirty years after the date of the warrants to be
23 paid. The secretary of the district shall certify to the county auditor of the county in which the
24 district is situated, or if the district embraces more than one county, to the county auditor of each
25 county in which district lands subject to ~~such~~the special assessments are situated, the total
26 amount assessed against ~~such~~ lands in that county and the proportion or percentage of ~~such~~the
27 amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district
28 also shall ~~also~~ file with the county auditor of each county in which district lands lie a statement
29 showing the cost of the project, the part ~~thereof~~of the cost, if any, ~~which will~~to be paid out of the
30 general taxes, and the part to be financed by special assessments. Funds needed to pay the
31 cost of maintaining a project may be raised in the same manner as funds were raised to meet

1 construction costs. If the project was financed in whole or in part through the use of special
2 assessments, the water resource board shall prorate the costs of maintaining ~~projects~~the
3 project in the same proportion as ~~were~~ the original costs of construction or, in the event a
4 reassessment of benefits has been adopted, the ~~costs shall be prorated~~board shall prorate
5 costs in accordance with the reassessment of benefits ~~as authorized by section 61-16.1-54.~~

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

8 **61-16.1-42. Drains along and across public roads and railroads.**

- 9 1. Drains may be laid along, within the limits of, or across any public road or highway, but
10 not to the injury of suchthe road. ~~In instances where it is~~If, during the preparation of
11 the report required under section 61-16.1-17, a water resource board discovers it may
12 be necessary to run a drain across a highway, the water resource board shall notify
13 and solicit guidance from the department of transportation, the board of county
14 commissioners, or the board of township supervisors, as the case may be, when
15 notified by the water resource board to do so, as soon as practicable. If the water
16 resource board determines the drain must be run across the highway after considering
17 any guidance received from the department of transportation, board of county
18 commissioners, or board of township supervisors, the department of transportation,
19 board of county commissioners, or board of township supervisors shall make
20 necessary openings through the road or highway at its own expense, and shall build
21 and keep in repair all required after receiving notice of the water resource board's
22 determination. The cost to build, maintain, and repair the culverts or bridges must be
23 allocated as provided under section 61-16.1-43. In instances where drains are laid
24 along or within the rights of way of roads or highways, the drains shall be maintained
25 and kept open by and at the expense of the water resource district concerned.
- 26 2. A drain may be laid along any railroad when necessary, but not to the injury of the
27 railroad, ~~and when it is necessary to run a drain across the railroad,.~~ If, during the
28 preparation of the report required under section 61-16.1-17, a water resource board
29 discovers it may be necessary to run a drain across a railroad, the water resource
30 board shall notify and solicit guidance from the railroad company as soon as
31 practicable. If the water resource board determines the drain must be run across the

1 ~~railroad after considering any guidance received from the railroad company, the~~
2 ~~railroad company, when notified by the water resource board to do so of the water~~
3 ~~resource board's determination,~~ shall make the necessary opening through such
4 railroad, ~~shall~~ build the required bridges and culverts, and ~~shall~~ keep them in repair.

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

7 **61-16.1-43. Construction of bridges and culverts - Costs.**

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

15 ~~Whenever~~

16 2. When any bridge or culvert is to be constructed on a county or township highway
17 system over and across or in connection with a drain, the water resource board shall
18 notify the county or township with authority for the highway and provide the county or
19 township reasonable time to review and provide input on the plans for the bridge or
20 culvert. The bridge or culvert must be maintained by the water resource board, and the
21 necessary expense must be deemed a part of the cost of maintenance, unless
22 otherwise agreed upon by the water resource board and the highway authority. If the
23 water resource board denies a request for maintenance submitted by the county or
24 township, the county or township may appeal the denial under chapter 28-34. The cost
25 of constructing ~~such~~the bridge or culvert ~~shall~~must be shared in the following manner:

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

1 2. ~~b.~~ ~~If, however, moneys have not been made~~ funds are not available to the
2 commission for participation ~~in accordance with subsection 1,~~ then forty percent
3 of the cost ~~of a bridge or culvert shall~~must be paid by the county and sixty
4 percent ~~shall~~must be charged as the cost of the drain to the district.

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

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

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

14 **Assessment drain culverts.**

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

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

1 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**

2 **Injunction - Definition.**

3 1. If a water resource board determines that an obstruction to aan artificial drain has
4 been caused by the negligent act or omission of a landowner or tenant, the board shall
5 notify the landowner by registered mail at the landowner's post-office address of
6 record. A copy of the notice also must ~~also~~ be sent to the tenant, if any. The notice
7 must specify the nature and extent of the obstruction; and the opinion of the board as
8 to its cause, and must state ~~that~~ if the obstruction is not removed within ~~such~~the period
9 as the board determines, but not less than fifteen days, the board shall procure
10 removal of the obstruction and assess the cost of the removal, or the portion the board
11 determines appropriate, against the property of the landowner responsible. The notice
12 also must ~~also~~ state ~~that~~ the affected landowner, within fifteen days of the date the
13 notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the
14 demand, the board shall set a hearing date within fifteen days from the date the
15 demand is received. In the event of an emergency, the board may apply immediately
16 ~~apply~~ to the appropriate district court for an injunction prohibiting a landowner or
17 tenant from maintaining an obstruction. Assessments levied under ~~the provisions of~~
18 this section must be collected in the same manner as other assessments authorized
19 by this chapter. If, in the opinion of the board, more than one landowner or tenant has
20 been responsible, the costs may be assessed on a pro rata basis in accordance with
21 the proportionate responsibility of the landowners. A landowner aggrieved by action of
22 the board under this section may appeal the decision of the board to the district court
23 of the county in which the land is located in accordance with the procedure provided in
24 section 28-34-01. A hearing ~~as provided for in~~under this section is not a prerequisite to
25 an appeal. If a complaint is frivolous in the discretion of the board, the board may
26 assess the costs of the frivolous complaint against the complainant. If the obstruction
27 is located in a road ditch, the timing and method of removal must be approved by the
28 appropriate road authority before the notice required by this section is given and
29 appropriate construction site protection standards must be followed.

30 2. For the purposes of this section, "an obstruction to a drain" means a barrier to a
31 ~~watercourse, as defined by section 61-01-06,~~ or an artificial drain, ~~including if the~~

1 ~~watercourse or whether or not the artificial~~ drain is located within a road ditch, ~~which-~~
2 ~~that~~ materially affects the free flow of waters in the ~~watercourse or~~ drain.

3 3. Following removal of an obstruction to a drain, either by a water resource board or by
4 a party complying with an order of a water resource board, the board may assess its
5 costs against the property of the responsible landowner.

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

8 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
9 **Jurisdiction.**

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

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

24 **Available mediation services.**

25 An aggrieved person may request assistance from the North Dakota mediation service to
26 resolve grievances arising from an order or decision of a water resource board within thirty days
27 of the order or decision. If the North Dakota mediation service agrees to assist the aggrieved
28 person, the water resource board shall participate in good faith in the mediation. Requesting
29 assistance or engaging in mediation under this section is not a prerequisite or a bar to
30 appealing an order or decision of a water resource board. Deadlines to initiate appeals by the

1 person requesting assistance from the North Dakota mediation service under this section are
2 tolled upon submission of the request until the request is denied or mediation ends.

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

5 **Designation of lateral drain.**

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

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 **Notice of letting of contracts.**

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

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

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

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

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

1 **Procedure to construct or extend an assessment drain through or into two or more**
2 **counties.**

3 To construct or extend an assessment drain in two or more counties, a petition must be
4 presented to the several water resource boards for the area in which the drain will lie for the
5 establishment of the drain under this chapter. The boards shall hold a joint meeting and shall
6 determine the necessity or expediency of the establishment of the drain. To proceed with the
7 drain, the boards shall agree upon the proportion of damages and benefits to accrue to the
8 lands affected in each county, and for this purpose the boards shall consider the entire course
9 of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to
10 accrue to the lands in each county, the boards shall submit the points in controversy to the
11 department of water resources, and the department's decision is final. The boards may
12 apportion the cost of establishing and constructing the entire drain ratably and equitably upon
13 the lands in each county in proportion to the benefits to accrue to the county's lands. When the
14 boards have apportioned the costs, the boards shall make written reports of the apportionment
15 to the auditors of the several counties affected. The reports must show the portion of cost of the
16 entire drain to be paid by taxes upon the lands in each of the counties and must be signed by
17 the boards of all counties affected. Upon the filing of the reports, the several boards shall meet
18 and assess against the lands in each of the counties, ratably and equitably as provided by this
19 chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The
20 provisions of this chapter relating to drains within a single county govern the establishment,
21 construction, maintenance, repair, and cleanout of the drains.

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

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

25 Drain costs must be paid upon order of the board by warrants signed by the chairman and
26 one other member of the board. The warrants are payable from the proper drain fund and, upon
27 maturity, are receivable by the treasurer for drain assessments supporting the fund. The
28 warrants may be issued at any time after the order establishing the drain has become final and
29 after incurring liability to pay for drain work to be financed by drain assessments and in
30 anticipation of levy and collection of the assessments. Every warrant not made payable on
31 demand must specify the date when it becomes payable. Demand warrants not paid for want of

1 funds must be registered by the county treasurer or, if the water resource district treasurer is
2 custodian of the drain funds, the water resource district treasurer and bear interest at a rate
3 determined by the board, not exceeding eight percent per annum. Warrants of specified
4 maturities bear interest according to their provisions at a rate or rates resulting in an average
5 net interest cost not exceeding twelve percent per annum if sold at private sale, and may be
6 issued with interest coupons attached. There is no interest rate ceiling on warrants sold at
7 public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain
8 warrants must state upon their faces the purpose for which they are issued and the drain fund
9 from which they are payable. The warrants may be used to pay drain obligations, or may be
10 sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants
11 sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid
12 warrants issued for the acquisition of right of way or the construction of a drain, including all
13 incidental costs in connection with the acquisition or construction, must be funded by a bond
14 issue within one hundred eighty days from and after the filing of the assessment of all costs with
15 the county auditor as provided in section 61-16.1-28, but this requirement may not be construed
16 as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day
17 period.

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

20 **Settlement of unpaid warrants.**

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

- 23 1. Drain warrants issued pursuant to the establishment of a drain in two or more counties
24 remain unpaid;
- 25 2. The amounts realized from the original assessments are not sufficient to pay the
26 warrants;
- 27 3. An additional assessment would be necessary to meet the deficit; and
- 28 4. The board finds the county has received benefits from the drain by reasons of public
29 health, convenience, or welfare and, as a result, may be liable for assessment or
30 reassessment and the credit of the county is or may be affected by the existence of
31 the outstanding and unpaid warrants.

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

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

4 If the board determines a drain, lateral drain, or ditch has been opened or established by a
5 landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall
6 notify the landowner by registered mail at the landowner's address of record. A copy of the
7 notice also must be sent to the tenant, if any. The notice must specify the nature and extent of
8 the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within
9 the period the board determines, but not less than fifteen days, the board shall procure the
10 closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board
11 determines, against the property of the landowner responsible. The notice also must state the
12 affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a
13 hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within
14 fifteen days from the date the demand is received. In the event of an emergency, the board may
15 apply immediately to the appropriate district court for an injunction prohibiting the landowner or
16 tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section
17 must be collected in the same manner as other assessments authorized by this chapter. If, in
18 the opinion of the board, more than one landowner or tenant has been responsible, the costs
19 may be assessed on a pro rata basis in accordance with the proportionate responsibility of the
20 landowners. A landowner aggrieved by action of the board under this section may appeal the
21 decision of the board to the district court of the county in which the land is located in
22 accordance with the procedure provided for in section 28-34-01. A hearing as provided for in
23 this section is not a prerequisite to an appeal.

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

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

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

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

3 **Sinking funds and bonds.**

4 A water resource board shall establish a sinking fund for each issue of bonds, and the fund
5 must consist of all drain assessments made for the bonds, all warrants funded, all assessments
6 for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not
7 actually expended for the drain, the reserve fund authorized for purchase of tax delinquent
8 lands affected by the drain, all general tax levies for payment of obligations of the drain, and any
9 other moneys that may be appropriated to the sinking fund. Separate sinking funds must be
10 provided for each separate drain for which bonds have been issued. Until the purpose of the
11 sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose
12 other than payment of the bonds for which the fund was created.

13 **SECTION 35.** A new section to chapter 61-16.1 of the North Dakota Century Code is
14 created and enacted as follows:

15 **Existing obligations and regulations.**

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

21 **SECTION 36. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the
22 North Dakota Century Code is amended and reenacted as follows:

23 g. If the subsurface water management system will discharge into the watershed
24 area of an assessment drain, inclusion of the relevant property into the
25 assessment district for the assessment drain in accordance with the benefits the
26 property receives, provided the property is not assessed already for the
27 assessment drain. The water resource district may include the new property into
28 the assessment district, and determine the benefits and assessment amounts
29 under ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment
30 of benefit proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided
31 the property is not assessed already for the assessment drain.

- 1 **SECTION 37. REPEAL.** Section 61-16.1-01 and chapter 61-21 of the North Dakota Century
- 2 Code are repealed.