

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1095**

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to amend and reenact section 61-16.1-53.1, subsection 4 of section 61-21-01,
2 and section 61-32-08 of the North Dakota Century Code, relating to administrative hearings for
3 noncomplying dams, dikes, and other devices, the definition of drain, and administrative
4 hearings for drainage projects; and to provide for a legislative management study.

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

6 **SECTION 1. AMENDMENT.** Section 61-16.1-53.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of**
9 **noncomplying dams, dikes, or other devices for water conservation, flood control,**
10 **regulation, and watershed improvement.**

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

1 of the matter. The state engineer may enter property affected by the complaint ~~for the~~
2 ~~purpose of investigating~~ to investigate the complaint.

3 2. If the board fails to investigate and make a determination concerning the complaint
4 within a reasonable time, not exceeding one hundred twenty days, the person filing the
5 complaint may file the complaint with the state engineer within one hundred fifty days
6 of the submittal date of the original complaint. The state engineer shall, without
7 reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be
8 made, either by action against the board; or by ~~personally~~ conducting the investigation
9 and ~~personally~~ making the determination.

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

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

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

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

19 4. If the state engineer decides to notify the landowner, the notice must specify the
20 nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other
21 device is not removed within ~~such a~~ reasonable time as determined by the state
22 engineer ~~determines~~, but not less than thirty days, the state engineer shall procure the
23 removal of the dam, dike, or other device and assess the cost of removal against the
24 responsible landowner's property of the responsible landowner. The notice from the
25 state engineer must state that, within fifteen days of the date the notice is mailed, the
26 affected landowner may demand, in writing, a hearing on the matter. Upon receipt of
27 the demand, the state engineer shall set a hearing date within fifteen days from the
28 date the demand is received. If, in the opinion of the state engineer, more than one
29 landowner or tenant has been responsible, the costs may be assessed on a pro rata
30 basis in proportion to the responsibility of the landowners. Upon assessment of costs,
31 the state engineer shall certify the assessment to the county auditor of the county

1 where the noncomplying dam, dike, or other device is located. The county auditor shall
2 extend the assessment against the property assessed. Each assessment must be
3 collected and paid as other property taxes are collected and paid. Assessments
4 collected must be deposited with the state treasurer and are hereby appropriated out
5 of the state treasury and must be credited to the contract fund established by section
6 61-02-64.1. Any person aggrieved by action of the state engineer under this section
7 may appeal the decision of the state engineer to the district court ~~in accordance~~
8 with chapter 28-32. A hearing by the state engineer as provided for in this
9 section is a prerequisite to ~~such~~ an appeal.

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

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

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

1 **SECTION 2. AMENDMENT.** Subsection 4 of section 61-21-01 of the North Dakota Century
2 Code is amended and reenacted as follows:

3 4. "Drain" means any natural watercourse opened, or proposed to be opened, and
4 improved for the purpose of drainage and any artificial drains of any nature or
5 description constructed for ~~such~~that purpose, including dikes and appurtenant works.
6 This definition may include more than one watercourse or artificial channel constructed
7 for the aforementioned purpose when the watercourses or channels drain land within a
8 practical drainage area as determined by the written petition called for in section
9 61-21-10 and the survey and examination called for in section 61-21-12.

10 **SECTION 3. AMENDMENT.** Section 61-32-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-32-08. Appeal of board decisions - State engineer review - Closing of**
13 **noncomplying drains.**

14 1. The board shall make the decision required by section 61-32-07 within a reasonable
15 time, but not to exceed one hundred twenty days, after receiving the complaint. The
16 board shall notify all parties of its decision by certified mail. ~~The~~Any aggrieved party
17 may appeal the board's decision may be appealed to the state engineer ~~by any~~
18 ~~aggrieved party.~~ The appeal to the state engineer must be made within thirty days
19 from the date notice of the board's decision has been received. The appeal must be
20 made by submitting a written notice to the state engineer, which must specifically set
21 forth the reason why the board's decision is erroneous. The appealing party shall also
22 submit copies of the written appeal notice to the board and to ~~the~~all nonappealing
23 ~~party~~parties. Upon receipt of this notice the board, if it has ordered closure of a drain,
24 lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the
25 drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting
26 an independent investigation and making an independent determination of the matter.
27 The state engineer may enter property affected by the complaint ~~for the purpose of~~
28 ~~investigating~~to investigate the complaint.

29 2. If the board fails to investigate and make a determination concerning the complaint
30 within a reasonable time, but not to exceed one hundred twenty days, the person filing
31 the complaint may file ~~such~~the complaint with the state engineer within one hundred

1 fifty days of the submittal date of the original complaint. The state engineer shall,
2 without reference to chapter 28-32, cause the investigation and determination to be
3 made, either by action against the board, or by ~~personally~~ conducting the investigation
4 and ~~personally~~ making the determination.

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

8 4. a. Notify the landowner by certified mail at the landowner's post-office address of
9 record;

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

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

13 4. If the state engineer decides to notify the landowner, the notice must specify the
14 nature and extent of the noncompliance and ~~must~~ state that if the drain, lateral drain,
15 or ditch is not closed or filled within ~~such a~~ reasonable time as determined by the state
16 engineer ~~shall determine~~, but not less than thirty days, the state engineer shall procure
17 the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~,
18 against the responsible landowner's property of ~~the landowner responsible~~. The notice
19 from the state engineer must state that the affected landowner may, within fifteen days
20 of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon
21 receipt of the demand, the state engineer shall set a hearing date within fifteen days
22 from the date the demand is received. If, in the opinion of the state engineer, more
23 than one landowner or tenant has been responsible, the costs may be assessed on a
24 pro rata basis in proportion to the responsibility of the landowners. Upon assessment
25 of costs, the state engineer shall certify the assessment to the county auditor of the
26 county where the noncomplying drain, lateral drain, or ditch is located. The county
27 auditor shall extend the assessment against the property assessed. Each assessment
28 must be collected and paid as other property taxes are collected and paid.
29 Assessments collected must be deposited with the state treasurer and ~~are hereby~~
30 ~~appropriated out of the state treasury and must be~~ credited to the contract fund
31 established by section 61-02-64.1. Any person aggrieved by action of the state

1 engineer under the provisions of this section may appeal the decision of the state
2 engineer to the district court ~~in accordance with~~under chapter 28-32. A hearing by the
3 state engineer as provided for in this section ~~shall be~~is a prerequisite to ~~such~~ an
4 appeal.

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

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

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

26 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the
27 legislative management shall assign to the water topics overview committee the responsibility of
28 studying the use of quick take in eminent domain by water resource districts. The study must
29 include input from stakeholders, including the state water commission, water resource districts,
30 and landowners. The legislative management shall report its findings and recommendations,

Sixty-fourth
Legislative Assembly

- 1 together with any legislation required to implement the recommendations, to the sixty-fifth
- 2 legislative assembly.