

Introduced by

Senator Wardner

Representative Schmidt

1 A BILL for an Act to create and enact six new sections to chapter 61-16.1 of the North Dakota  
2 Century Code, relating to procedures for drain permits, assessments projects, and operations of  
3 water resource districts; to amend and reenact subsection 1 of section 54-57-03, sections  
4 61-02-01.4 and 61-05-02.1, subsection 3 of section 61-16-08, section 61-16.1-02,  
5 subsection 16 of section 61-16.1-09, and sections 61-16.1-09.1, 61-16.1-09.2, 61-16.1-15,  
6 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23,  
7 61-16.1-24, 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-29, 61-16.1-30, 61-16.1-31,  
8 61-16.1-32, 61-16.1-33, 61-16.1-34, 61-16.1-39.2, 61-16.1-42, 61-16.1-43, 61-16.1-45,  
9 61-16.1-46, 61-16.1-47, 61-16.1-48, 61-16.1-54, 61-16.1-62, and 61-16.1-63 of the North  
10 Dakota Century Code, relating to assessment projects, operations of water resource districts,  
11 and removal of obsolete text; to repeal sections 61-16.1-01 and 61-16.1-61 and chapters 61-21  
12 and 61-32 of the North Dakota Century Code, relating to assessment drains, drain permits,  
13 noncompliant drains, and obsolete provisions; and to provide a penalty.

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

15 **SECTION 1. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota Century  
16 Code is amended and reenacted as follows:

17 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other  
18 persons to preside in an administrative proceeding, all adjudicative proceedings of  
19 administrative agencies under chapter 28-32, except those of the public service  
20 commission, the industrial commission, the insurance commissioner, the state  
21 engineer, the department of transportation, job service North Dakota, and the labor  
22 commissioner, must be conducted by the office of administrative hearings in  
23 accordance with the adjudicative proceedings provisions of chapter 28-32 and any  
24 rules adopted pursuant to chapter 28-32. ~~But~~However, appeals hearings pursuant to

1 section 61-03-22 and drainage permit appeals from water resource boards to the state  
2 engineer pursuant to chapter 61-3261-16.1 must be conducted by the office of  
3 administrative hearings. Additionally, hearings of the department of corrections and  
4 rehabilitation for the parole board in accordance with chapter 12-59, regarding parole  
5 violations; job discipline and dismissal appeals to the board of higher education;  
6 Individuals With Disabilities Education Act and section 504 due process hearings of  
7 the superintendent of public instruction; and chapter 37-19.1 veterans' preferences  
8 hearings for any agency must be conducted by the office of administrative hearings in  
9 accordance with applicable laws.

10 **SECTION 2. AMENDMENT.** Section 61-02-01.4 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **61-02-01.4. State water commission cost-share policy.**

13 The state water commission shall review, gather stakeholder input on, and rewrite as  
14 necessary the commission's "Cost-share Policy, Procedure and General Requirements" and  
15 "Project Prioritization Guidance" documents. The commission's cost-share policy:

- 16 1. Must provide a water supply project is eligible for a cost-share up to seventy-five  
17 percent of the total eligible project costs.
- 18 2. May not determine program eligibility of water supply projects based on a population  
19 growth factor. However, a population growth factor may be used in prioritizing projects  
20 for that purpose.
- 21 3. Must consider all project costs potentially eligible for reimbursement, except the  
22 commission shall exclude operations expense, regular maintenance, and removal of  
23 vegetative materials and sediment; for assessment drains, and may exclude  
24 operations expense and regular maintenance for other projects. ~~Snagging and~~  
25 ~~clearing of watercourses are~~Changing the flow capacity of drains by widening or  
26 deepening channels is not regular maintenance. The commission shall require a water  
27 project sponsor to maintain a capital improvement fund from the rates charged  
28 customers for future extraordinary maintenance projects as a condition of funding an  
29 extraordinary maintenance project.
- 30 4. May not determine program eligibility of water supply projects based on affordability.  
31 However, affordability may be used in prioritizing projects for that purpose.

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

3       **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

4       Notwithstanding section 61-05-02, an irrigation district may not be created if the primary  
5 purpose of the district is to provide drainage benefits to residents of the district. A drainage  
6 project proposed, undertaken, approved, or subject to assessment by an irrigation district also  
7 is subject to the drain permit requirements under chapter ~~61-32~~61-16.1. Drainage benefits  
8 provided by an irrigation district may not impact the authority of a water resource board to  
9 assess for drainage projects under chapter 61-16.1 ~~or 61-21~~.

10       **SECTION 4. AMENDMENT.** Subsection 3 of section 61-16-08 of the North Dakota Century  
11 Code is amended and reenacted as follows:

12       3. A manager may be removed from the board by the board of county commissioners  
13 after it appears to the board of county commissioners determines by competent  
14 evidence; and after a public hearing; if so requested by the manager subject to  
15 removal, at which hearing the manager must be apprised of and allowed ample  
16 opportunity to repudiate the evidence, ~~that~~ the manager has been guilty of  
17 misconduct, malfeasance, crime in office, neglect of duty in office, habitual  
18 drunkenness, gross incompetency, or inability to perform the duties of office for  
19 reasons of health.

20       **SECTION 5. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22       **61-16.1-02. Definitions.**

23       In this chapter, unless the context or subject matter otherwise provides:

- 24       1. "Affected landowners" means landowners whose land is subject to special  
25 assessment or condemnation for a project.
- 26       2. "Assessment drain" means ~~any natural watercourse opened, or proposed to be~~  
27 ~~opened, and improved for the purpose of drainage, and any artificial drain of any~~  
28 ~~nature or description constructed for the purpose of drainage, including dikes and~~  
29 ~~appurtenant works, which area~~ drain financed in whole or in part by special  
30 assessment. ~~This definition may include more than one watercourse or artificial~~

1 ~~channel constructed for the purpose of drainage when the watercourses or channels~~  
2 ~~drain land within a practical drainage area.~~

3 3. "Cleaning out and repairing a drain" means removing obstructions or sediment from a  
4 drain and making repairs to the drain necessary to return the drain to a satisfactory  
5 and useful condition.

6 4. "Commission" means the state water commission.

7 4.5. "Conservation" means planned management of water resources to prevent  
8 exploitation, destruction, neglect, or waste.

9 5.6. "Costs of the frivolous complaint" means all reasonable costs associated with the  
10 requisite proceedings regarding the removal of obstructions to a drain, removal of a  
11 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable  
12 construction costs; all reasonable attorney's fees and legal expenses; all reasonable  
13 engineering fees, including investigation and determination costs; compliance  
14 inspections; and necessary technical memorandum and deficiency review; and all  
15 costs associated with any hearing conducted by a district, including preparation and  
16 issuance of any findings of fact and any final closure order.

17 6.7. "District" means a water resource district.

18 7.8. "Drain" means any natural water course opened, or proposed to be opened, and  
19 improved for drainage, and any artificial drain constructed for drainage. The term  
20 includes dikes and appurtenant works.

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

23 8.10. "Maintenance" means repairing a structure or otherwise bringing a structure back to  
24 the structure's original design. The term does not include widening or deepening the  
25 channel of a drain with the result of increasing the flow capacity of the drain as  
26 compared to the flow capacity of the drain when the most recent permit for the drain  
27 was issued.

28 11. "Practical drainage area" means the area of land to be drained by a proposed  
29 assessment drain and must be determined by the petition submitted to a water  
30 resource board for the assessment drain and the survey and examination required  
31 under section 61-16.1-17.

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

6        ~~9.13.~~ "Water resource board" means the water resource district's board of managers.

7        **SECTION 6. AMENDMENT.** Subsection 16 of section 61-16.1-09 of the North Dakota  
8        Century Code is amended and reenacted as follows:

9        16. ~~Order or initiate appropriate legal action to compel~~ Notify the entity responsible for the  
10        maintenance and repair of any bridge or culvert when action is needed to remove from  
11        under, within, and around ~~such~~ the bridge or culvert all dirt, rocks, weeds, brush,  
12        shrubbery, other debris, and any artificial block ~~which~~ that hinders or decreases the  
13        flow of water through ~~such~~ the bridge or culvert.

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

16        **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

17        4. A water resource board may undertake the snagging, clearing, and maintaining of  
18        natural watercourses and the debris removal of bridges and low-water crossings. To the extent  
19        practicable, water resource boards in a common basin shall prepare and execute a basinwide  
20        plan for snagging, clearing, and maintaining natural watercourses; and removing debris from  
21        bridges and low-water crossings. The board may finance the project in whole or in part with  
22        funds raised through the collection of a special assessment levied against the land and  
23        premises benefited by the project. The benefits of a project must be determined in the manner  
24        provided in section ~~61-16.1-17~~ 61-16.1-21. Revenue from an assessment under this section may  
25        not be used for construction of a drain or reconstruction or maintenance of an existing  
26        assessment drain. Any question as to whether the board is maintaining a natural watercourse ~~or~~  
27        is, constructing a drain, or reconstructing or maintaining an existing assessment drain must be  
28        determined by the state engineer. ~~All provisions of this chapter apply to assessments levied~~  
29        ~~under this section except:~~

- 1           a. ~~An assessment may not exceed fifty cents per acre [.40 hectare] annually on-~~  
2           ~~agricultural lands and may not exceed fifty cents annually for each five hundred~~  
3           ~~dollars of taxable valuation of nonagricultural property; and~~
- 4           b. ~~If the assessment is for a project costing less than one hundred thousand dollars,~~  
5           ~~no action is required for the establishment of the assessment district or the~~  
6           ~~assessments except the board must approve the project and assessment by a~~  
7           ~~vote of two thirds of the members and the board of county commissioners of the~~  
8           ~~county in which the project is located must approve and levy the assessments to~~  
9           ~~be made by a vote of two thirds of its members.~~
- 10          (1) ~~If a board that undertakes a project finds that the project will benefit lands~~  
11          ~~outside water resource district boundaries, the board shall provide notice to~~  
12          ~~the water resource board where the benefited lands are located together~~  
13          ~~with the report prepared under section 61-16.1-17.~~
- 14          (2) ~~The board of each water resource district containing lands benefited by a~~  
15          ~~project must approve the project and assessment by a vote of two thirds of~~  
16          ~~its members. The board of county commissioners in each county that~~  
17          ~~contains lands benefited by a project must approve and levy the~~  
18          ~~assessment to be made by a vote of two thirds of its members.~~
- 19          (3) ~~If a project and assessment is not approved by all affected water resource~~  
20          ~~boards and county commission boards, the board of each water resource~~  
21          ~~district and the board of county commissioners of each county shall meet to~~  
22          ~~ensure that all common water management problems are resolved pursuant~~  
23          ~~to section 61-16.1-10. In addition, the water resource board that undertakes~~  
24          ~~the project may proceed with the project if the board finances the cost of the~~  
25          ~~project and does not assess land outside the boundaries of the district.~~
- 26          e. ~~All revenue from an assessment under this section must be exhausted before a~~  
27          ~~subsequent assessment covering any portion of lands subject to a prior~~  
28          ~~assessment may be levied.~~
- 29          2. ~~Before an assessment may be levied under this section, a public hearing must be held~~  
30          ~~and attended by a quorum of the affected water resource boards and a quorum of the~~  
31          ~~affected boards of county commissioners. The hearing must be preceded by notice as~~

1           to date, time, location, and subject matter published in the official newspaper in the  
2           county or counties in which the proposed assessment is to be levied. The notice must  
3           be published at least ten days but not more than thirty days before the public  
4           hearing. Assessments under this section must comply with the requirements of this  
5           chapter.

6           **SECTION 8. AMENDMENT.** Section 61-16.1-09.2 of the North Dakota Century Code is  
7           amended and reenacted as follows:

8           **61-16.1-09.2. Release of easements -- Procedure property interests no longer needed.**

9           ~~When it deems such action to be in the best interests of the district or other political~~  
10          ~~subdivision, a water resource board or~~

11          1. The governing body of another political subdivision, including a water resource  
12          district, may release easements assigned to it the political subdivision from the state for  
13          the construction, operation, and maintenance of dams, along with access to the dams,  
14          if the dams are no longer useful and the governing body deems the release to be in  
15          the best interest of the political subdivision.

16          2. A board of county commissioners may reconvey land previously acquired for drainage  
17          but no longer required for drainage to the present owner of the adjacent property if the  
18          owner surrenders all warrants issued in payment of the land or repays the amount of  
19          cash paid for the land.

20          **SECTION 9. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is  
21          amended and reenacted as follows:

22          **61-16.1-15. Financing project through revenue bonds, general taxes, or special**  
23          **assessments - Apportionment of benefits.**

24          1. A water resource board ~~shall have the authority~~, either upon request or by its own  
25          motion, ~~to~~ may acquire needed interest in property and provide for the cost of  
26          construction, alteration, repair, operation, and maintenance of a project through  
27          issuance of ~~improvement~~ warrants or with funds raised by special assessments,  
28          general tax levy, issuance of revenue bonds, or by a combination of general ad  
29          valorem tax, special assessments, and revenue bonds. ~~Whenever~~

30          2. A request to the board for an assessment drain must be in the form of a written petition  
31          identifying the starting point, terminus, and general course of the drain. An assessment

1 drain may include more than one watercourse or artificial channel constructed for  
2 drainage when the watercourses or channels drain land within a practical drainage  
3 area. The petition must be signed by no less than six landowners that own land to be  
4 drained by the proposed drain, or a majority of landowners that own land to be drained  
5 by the proposed drain if the majority is fewer than six. If among the leading purposes  
6 of the proposed drain are benefits to the health, convenience, or welfare of the  
7 residents of any city, the petition must be signed by a sufficient number of the property  
8 owners of the city to satisfy the board there is a public demand for the drain. The  
9 board also shall notify all owners of land that may be assessed for the project if the  
10 project is approved. The board shall take reasonable steps to identify which land may  
11 be assessed.

12 3. If a water resource board decides to acquire property or interests in property to  
13 construct, operate, alter, repair, or maintain a project with funds raised in whole or in  
14 part through special assessments, ~~such~~the assessments ~~shall~~must be apportioned to  
15 and spread upon lands or premises benefited by the project in proportion to and in  
16 accordance with the benefits accruing thereto to the lands or premises. The board shall  
17 assess the proportion of the cost of the project, or the part of the cost to be financed  
18 with funds raised through levy and collection of special assessments which any lot,  
19 piece, or parcel of land shall bear, in proportion to the benefits accruing thereto and  
20 any county, city, or township which is to any political subdivision and any lot, piece, or  
21 parcel of land benefited thereby by the project. In determining assessments, the water  
22 resource board shall ~~carry out~~ensure, to the maximum extent possible the water-  
23 management policy of this chapter that, upstream landowners ~~must~~will share with  
24 downstream landowners the responsibility to provide for the proper management of  
25 surface waters.

26 **SECTION 10.** A new section to chapter 61-16.1 of the North Dakota Century Code is  
27 created and enacted as follows:

28 **Bond required from requesters - Costs incurred by board.**

29 1. A water resource board may require the persons that requested an assessment  
30 project under section 61-16.1-15 to file a bond with the request in a sum sufficient to  
31 pay all expenses, including the cost of surveys, incurred by the board if the board



1 denies the request. However, the requesters may not be required to pay the expenses  
2 if the request is approved by the board, regardless of whether the project is  
3 constructed.

4 2. If the board denies a request for an assessment project, the board may bring an action  
5 against the requesters or the requesters' bond for all expenses incurred in the board's  
6 proceedings, and the requesters are jointly and severally liable for the expenses  
7 unless the board pays the expenses out of funds available to the board.

8 **SECTION 11. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **61-16.1-17. Financing of special improvements with special assessments - Procedure.**

11 ~~When it is proposed to finance~~

12 1. If a water resource board or other person proposes a project to be financed in whole  
13 or in part the construction of a project with funds raised through the collection of  
14 special assessments levied against lands and premises benefited by construction and  
15 maintenance of such project, the water resource board shall examine the proposed  
16 project, and if in its opinion further proceedings are warranted, it and decide whether  
17 the request was submitted properly and whether construction and maintenance of the  
18 proposed project is necessary. If the board decides the request was submitted  
19 properly and construction and maintenance of the proposed project is necessary, the  
20 board shall adopt a resolution and ~~declare that~~ stating it is necessary to construct and  
21 maintain the project. The resolution shall briefly must state the nature and purpose of  
22 the proposed project and shall designate a registered engineer to assist the board.

23 2. For the purpose of making examinations or surveys for the proposed project, the  
24 board or its employees, after written notice to each landowner, may enter upon any  
25 land on which the proposed project is located or any other lands necessary to gain  
26 access. The engineer shall prepare a report consisting of profiles, plans, and  
27 specifications of the proposed project and estimates of the total cost thereof. The  
28 estimate of costs prepared by the engineer shall must include ~~acquisition of right~~ the  
29 cost of acquiring rights of way and shall be in sufficient detail ~~to allow for~~ for the board to  
30 determine the probable share of the total costs ~~that will~~ to be assessed against each of  
31 the affected landowners in the proposed project assessment district.

1        3. For a proposed assessment drain, the engineer's report must include a map of the  
2        lands to be drained showing the regular subdivisions of the land, and the map must be  
3        filed for public inspection in the office of the county auditor for each county in which  
4        lands are to be drained. The board may set the location of the proposed assessment  
5        drain on lines differing from the lines in the request. If the length of the drain in the  
6        request does not provide sufficient fall to drain the land to be drained, the board may  
7        extend the drain below the outlet identified in the request.

8        **SECTION 12. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is  
9        amended and reenacted as follows:

10        **61-16.1-18. HearingSpecial assessments hearing - Notice - Contents.**

11        1. Upon the filing of the engineer's report provided for in~~under~~ section 61-16.1-17, and  
12        after satisfying the requirements of section 61-16.1-21, the water resource board shall  
13        fix a date and place for public hearing on the proposed project. The date set for the  
14        hearing must be not less than twenty days after the mailing of the notice required  
15        under this section. The place of hearing must be in the vicinity of the proposed project  
16        and must be convenient and accessible for the majority of the affected landowners  
17        ~~subject to assessment for the project or whose property is subject to condemnation for~~  
18        ~~the proposed project.~~

19        2. The board shall cause a complete list of the benefits and assessments to be made,  
20        ~~setting forth each county, township, or city assessed in its corporate capacity as well~~  
21        ~~as each political subdivision and each lot, piece, or parcel of land to be assessed;~~<sub>i</sub> the  
22        amount each is to be benefited by the improvementproject; and the amount to be  
23        assessed against each. At least ten days before the hearing, the board shall file with  
24        the county auditor of each county ~~or counties~~ in which the project is or will be located  
25        the list showing the percentage ~~assessment~~to be assessed against each parcel of  
26        land benefited ~~by the proposed project~~ and the approximate assessment in terms of  
27        money to be apportioned thereto to the parcel. Notice of the filing must be included in  
28        the notice of hearing.

29        3. Notices of the hearing must contain a copy of the resolution of the board ~~as well as~~and  
30        the time and place where the board will conduct the hearing. The notice of hearing  
31        must specify the general nature of the project as finally determined by the engineer

1 and the board. The notice of hearing also must also specify when and where votes  
2 concerning the proposed project may be filed. The board shall cause the notice of  
3 hearing to be published once a week for two consecutive weeks in the newspaper or  
4 newspapers of general circulation in the area in which the affected landowners reside  
5 and in the official county newspaper of each county in which the benefited lands are  
6 located.

7 4. The assessment list showing the percentage assessment against each parcel of land  
8 benefited by the proposed project ~~and~~, the approximate assessment in terms of  
9 money to be apportioned thereto to the parcel, ~~along with~~ a copy of the notice of the  
10 hearing, and a ballot form must be mailed to each affected landowner at the  
11 landowner's address as shown by the tax rolls of the county ~~or counties~~ in which the  
12 affected property is located. The board may send the assessment list and notice by  
13 regular mail attested by an affidavit of mailing signed by the attorney or secretary of  
14 the board. ~~The board shall cause the notice of hearing to be published once a week~~  
15 ~~for two consecutive weeks in the newspaper or newspapers of general circulation in~~  
16 ~~the area in which the affected landowners reside and in the official county newspaper~~  
17 ~~of each county in which the benefited lands are located. The date set for the hearing~~  
18 ~~must not be less than twenty days after the mailing of the notice.~~

19 5. A record of the hearing must be made by the board, ~~including~~include a list of affected  
20 landowners present in person or by agent, and ~~the record must be preserved in the~~  
21 ~~minutes of the meeting. Affected landowners, and the governing body of any county,~~  
22 ~~township, or city political subdivision to be assessed, may express opinions and offer~~  
23 ~~evidence regarding the proposed project and~~ must be informed at the hearing of the  
24 probable total cost of the project and their individual, the person's share of the cost,  
25 and the portion of ~~their~~the person's property, if any, to be condemned for the project.

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

28 **61-16.1-19. Voting on proposed assessment projects.**

29 At the hearing, the affected landowners, and any ~~county, township, or city political~~  
30 subdivision to be assessed, must ~~also~~ be informed when and where votes concerning the  
31 proposed project may be filed. Affected landowners, and the governing body of any ~~county,~~

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

26 **SECTION 14. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **61-16.1-20. Assessments - Voting right or powers of landowners.**

29 ~~In order that there may be~~To provide a fair relation between the amount of liability for  
30 assessments and the power of objecting to the establishment of a proposed project, the voting  
31 rights of affected landowners on the question of establishing the project are as provided in this

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

11 **SECTION 15. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **61-16.1-21. Assessment of cost of project.**

14 ~~Whenever the~~

15 1. If a 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 especially by the  
20 construction of the work for which the assessment is made ~~and~~. The board shall  
21 assess ~~the proportion of~~ the total cost of acquiring ~~right~~rights of way and constructing  
22 and maintaining ~~such improvement in accordance with~~ the project in proportion to, but  
23 not exceeding, the benefits received but not exceeding such benefits from the  
24 construction for which the assessment will be made, against:

25 1. a. Any ~~county, township, or city~~political subdivision, in its corporate capacity, which  
26 may be benefited directly or indirectly ~~thereby~~.

27 2. b. Any lot, piece, or parcel of land which is benefited directly ~~benefited by such~~  
28 ~~improvement~~.

29 2. In determining benefits the board shall consider, among other factors, property values,  
30 degree of improvement of properties, productivity, and the water management policy  
31 ~~as expressed in section 61-16.1-15 of this state~~. Property belonging to the United

1 States shall be exempt from such assessment, unless the United States has  
2 provided for the payment of any assessment which that may be levied against  
3 its federal property for benefits received. Benefited property belonging to counties,  
4 cities, school districts, park districts, and townships shall not be political subdivisions is  
5 not exempt from such assessment and political. Political subdivisions whose that have  
6 property is so assessed shall provide for the payment of such the assessments,  
7 installments thereof of the assessments, and interest thereon on the assessments, by  
8 the levy of taxes according to law. Any county, township, or city assessed in its  
9 corporate capacity for benefits received shall provide for the payment of such  
10 assessments, installments thereof, and interest thereon from its from a general fund or  
11 by levy of a general property tax against all the taxable property therein in the political  
12 subdivision in accordance with law. No tax limitation provided by any Tax limitations  
13 under a statute of this state shall do not apply to tax levies made by any such political  
14 subdivision for the purpose of paying any special assessments made in accordance  
15 with the provisions of under this chapter. There shall be attached A water resource  
16 board shall attach to the list of assessments a certificate signed by a majority of the  
17 members of the board certifying that the same the list of assessments is a true and  
18 correct assessment of the benefit therein described to the best of their the board  
19 members' judgment and stating the several identifying the items of expense included in  
20 the assessment.

- 21 3. Land that has been assessed or is being assessed for an assessment drain may not  
22 be assessed for a new drain unless the water resource board demonstrates the land  
23 will benefit from the construction of the new drain.

24 **SECTION 16. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**  
27 **assessments - Confirmation of assessment list - Filing.**

28 After entering an order establishing the project an assessment project or assessment drain,  
29 the water resource board shall cause the assessment list to be published once each week for  
30 three successive weeks in the newspaper or newspapers of general circulation in the district  
31 and in the official county newspaper of each county in which the benefited lands are located

1 together with a notice of the time when, and place where, the board will meet to hear objections  
2 to any assessment by any interested party, or an agent or attorney for ~~that~~an interested party.  
3 The board also shall mail a copy of the notice of the hearing in an envelope clearly marked  
4 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by  
5 the tax rolls of the county ~~or counties~~ in which the affected property is located. The date set for  
6 the hearing may not be less than thirty days after the mailing of the notice. At the hearing, the  
7 board may ~~make such alterations in~~alter the assessments ~~as in its opinion may be~~the board  
8 deems just and necessary to correct any error in the assessment ~~but must~~. The board shall  
9 make the aggregate of all assessments equal to the total amount required to pay the entire cost  
10 of the work for which the assessments are made, or the part of the cost to be paid by special  
11 assessment. An assessment may not exceed the benefit as determined by the board to the  
12 parcel of land or political subdivision assessed. The board shall ~~then~~ confirm the assessment  
13 list ~~and thereafter the hearing~~. The secretary shall attach to the list a certificate thatstating the  
14 same assessment list is correct as confirmed by the board and shall file the list in the office of  
15 the secretary. If the assessments are for an assessment drain, the list must be filed with the  
16 board's permanent records of the drain and recorded by the county auditor in a book of  
17 drainage assessments.

18 **SECTION 17. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **61-16.1-23. Assessments - Appeal to state engineer.**

21 ~~After~~Within thirty days after the hearing ~~provided for in~~under section 61-16.1-22, affected  
22 landowners ~~and~~or any political subdivision subject to assessment, having not less than twenty  
23 percent of the possible votes; as determined by section 61-16.1-20, ~~who believe that~~which  
24 believes the assessment ~~had not been~~was not fairly or equitably made, or ~~that~~ the project is not  
25 properly located or designed, may appeal to the state engineer by petition, ~~within ten days after~~  
26 ~~the hearing on assessments~~, to make a review of the assessments and ~~to~~ examine the location  
27 and design of the proposed project. Upon receipt of ~~such~~the petition, the state engineer shall  
28 examine the lands assessed and the location and design of the proposed project, ~~and if it~~  
29 ~~appears that~~. If the state engineer believes the assessments ~~have not been~~were not made  
30 equitably, the state engineer may ~~proceed to~~ correct and adjust the ~~same~~assessments, and the  
31 state engineer's correction and adjustment ~~of said assessment~~ is final. ~~Should it appear that, in~~

1 ~~the judgment of~~ the state engineer, believes the project ~~has been improperly~~was located or  
2 designed improperly, the state engineer may order a relocation and redesign. ~~Such relocation~~  
3 ~~and redesign~~ that must be followed in the construction of the proposed project. Upon filing a  
4 bond for two hundred fifty dollars with the board ~~for the payment of~~ to pay the costs of the state  
5 engineer in the matter, any landowner or political subdivision ~~who or which~~that claims ~~that~~ the  
6 landowner or political subdivision will receive no benefit ~~at all~~ from the construction of a new  
7 project may appeal to the state engineer, within ~~ten~~thirty days after the hearing on  
8 assessments, the question of whether there is any benefit. The state engineer may not  
9 determine the specific amount of benefit upon an appeal by an individual landowner or political  
10 subdivision; but shall ~~only~~ determine ~~if~~whether there is any benefit to the landowner or political  
11 subdivision, and the determination of the state engineer ~~upon such question~~ is final.

12 **SECTION 18. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **61-16.1-24. When assessments may be made.**

15 After the requirements of this chapter have been satisfied and a contract and bond for any  
16 work for which a special assessment is to be levied have been approved by the water resource  
17 board, the board may direct special assessments to be levied for the payment of appropriate  
18 costs, and the secretary shall certify to the board the items of total cost to be paid by special  
19 assessments so far as ~~they~~the costs have been ascertained. The certificate shallmust include  
20 the estimated construction cost under the terms of any contract; a reasonable allowance for the  
21 cost of extra work ~~which~~that may be authorized under the plans and specifications; ~~acquisition~~  
22 ~~of right; the cost of acquiring rights of way;~~ engineering, fiscal agents', and attorney's fees for  
23 any services in connection with ~~the authorization~~authorizing and financing of the  
24 ~~improvement; project; the cost of publication of publishing~~ required notices; and printing of  
25 ~~improvement warrants; cost necessarily paid;~~ necessary payments for damages caused by  
26 ~~such improvement; the project;~~ interest during the construction period; and all other expenses  
27 incurred in making the ~~improvement~~project and levy of assessments.

28 ~~In no event shall any contract or contracts be awarded which~~ Contracts that exceed, by  
29 twenty percent or more, the estimated cost of the project as presented to and approved by the  
30 affected landowners may not be awarded.



1       **SECTION 19. AMENDMENT.** Section 61-16.1-26 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **61-16.1-26. Reassessment of benefits.**

4       The water resource board may hold at any time or, upon petition of any affected landowner  
5 or political subdivision ~~which has been~~ assessed after a project has been in existence for at  
6 least one year, shall hold a hearing for the purpose of determining the benefits of ~~such~~the  
7 project to each tract of land affected. Notice of the hearing must be given by publication once  
8 each week for three consecutive weeks, beginning at least thirty days before the hearing, in the  
9 newspaper ~~or newspapers~~ having general circulation in the district and in the official county  
10 newspaper of each county in which the benefited lands are located and by mailing notice of the  
11 hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each owner of land in the  
12 assessed district at the landowner's address as shown by the tax rolls of the counties in which  
13 the affected property is located. The provisions of this chapter governing the original  
14 determination of benefits and assessment of costs apply to any reassessment of benefits  
15 carried out under this section. The board may not be forced to make ~~such~~a reassessment more  
16 than once every ten years, ~~nor may any.~~ An assessment or balance thereof of an assessment  
17 supporting a project fund may not be reduced or impaired by reassessment or otherwise ~~so~~  
18 ~~long as~~if bonds payable out of ~~such~~the fund remain unpaid and moneys are not available in  
19 ~~such~~the fund to pay all ~~such~~the bonds in full, with interest. Costs of maintenance must be  
20 prorated in accordance with any plan for reassessment of benefits that has been adopted.

21       **SECTION 20. AMENDMENT.** Section 61-16.1-27 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **61-16.1-27. Correction of errors and mistakes in special assessments - Requirements**  
24 **governing.**

25       If mathematical errors or other ~~such~~ mistakes occur in making any assessment resulting in  
26 a deficiency in that assessment, the water resource board shall cause additional assessments  
27 to be made in a manner substantially complying with chapter 40-26 as it relates to special  
28 assessments.

29       **SECTION 21. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **61-16.1-28. Certification of assessments to county auditor.**

2           When a water resource board, by resolution, has caused special assessments to be levied  
3 to cover the cost of constructing a project, the board shall determine the rate of interest unpaid  
4 special assessments ~~shall~~will bear, ~~which and the rate shall~~may not exceed one and one-half  
5 percent above the warrant rate. Interest on unpaid special assessments ~~shall~~must commence  
6 on the date the assessments are ~~finally~~ confirmed by the board. Special assessments may be  
7 certified and made payable in equal annual installments, the last of which ~~shall~~must be due and  
8 payable not more than thirty years after the date of the warrants to be paid. The secretary of the  
9 district shall certify to the county auditor of the county in which the district is situated, or if the  
10 district embraces more than one county, to the county auditor of each county in which district  
11 lands subject to ~~sueh~~the special assessments are situated, the total amount assessed against  
12 ~~sueh~~ lands in that county and the proportion or percentage of ~~sueh~~the amount assessed against  
13 each piece, parcel, lot, or tract of land. The secretary of the district shall ~~also~~ file with the county  
14 auditor of each county in which district lands lie a statement showing the cost of the project, the  
15 part ~~thereof~~of the project, if any, ~~which will~~to be paid out of the general taxes, and the part to be  
16 financed by special assessments. Funds needed to pay the cost of maintaining a project may  
17 be raised in the same manner as funds were raised to meet construction costs. If the project  
18 was financed in whole or in part through the use of special assessments, the water resource  
19 board shall prorate the costs of maintaining ~~projects~~the project in the same proportion as ~~were~~  
20 the original costs of construction, or, ~~in the event~~if a reassessment of benefits has been  
21 adopted, the costs ~~shall~~must be prorated in accordance with the reassessment of benefits as  
22 ~~authorized by section 61-16.1-54.~~

23           **SECTION 22. AMENDMENT.** Section 61-16.1-29 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to**  
26 **district.**

27           The county auditor of each county shall extend the special assessments certified to the  
28 county auditor on the tax list of the district for the current year and ~~sueh~~the assessments, with  
29 interest and penalties, if any, ~~shall~~must be collected by the county treasurer as general taxes  
30 are collected and ~~shall~~ be paid to the treasurer of the district.

1       **SECTION 23. AMENDMENT.** Section 61-16.1-30 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **61-16.1-30. Lien of special assessment.**

4       A special assessment imposed by a district, ~~together with interest and penalties which that~~  
5 ~~accrue thereon~~ on the assessment, ~~shall become~~ are a lien upon the property on which the  
6 assessment is levied from the time the assessment list is approved by the water resource board  
7 until the assessment is fully paid. ~~Such~~ The liens ~~shall~~ have precedence over all other liens  
8 except general tax liens and ~~shall~~ may not be divested by any judicial sale. ~~No~~ A mistake in the  
9 description of the property covered by the special assessment lien or in the name of the owner  
10 of ~~such~~ the property ~~shall~~ does not defeat the lien if the assessed property can be identified by  
11 the description in the assessment list. This chapter ~~shall be considered~~ is deemed notice to all  
12 subsequent encumbrancers of the priority of special assessments imposed under this chapter.

13       **SECTION 24. AMENDMENT.** Section 61-16.1-31 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15       **61-16.1-31. Foreclosure of tax lien on property when general and special assessment**  
16 **taxes are delinquent.**

17       Special assessments imposed under this chapter ~~shall~~ become due and ~~delinquent,~~ and  
18 ~~shall be~~ subject to penalties and nonpayment at the same date and rates as first installments of  
19 real estate taxes at the same time and in the same manner as provided in title 57.

20       If there is no delinquent general property tax against a tract or parcel of land and ~~if the tract~~  
21 or parcel is foreclosed for special assessments alone, the notice of foreclosure of tax lien  
22 ~~shall~~ must state that the foreclosure is for special assessments, and a tax deed ~~in such case~~  
23 ~~shall~~ must be issued in the usual course of procedure.

24       **SECTION 25. AMENDMENT.** Section 61-16.1-32 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26       **61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void**  
27 **- Exceptions.**

28       1. The collection of any tax or assessment levied or ordered to be levied to pay for the  
29 location and construction of any project under ~~the provisions of this chapter~~ shall may  
30 not be enjoined perpetually or absolutely declared void by reason of any of the  
31 following:

- 1        1. a. Any error of any officer or board in the location and establishment thereof of the  
2                    project.
- 3        2. b. Any error or informality appearing in the record of the proceedings by which any  
4                    project was established.
- 5        3. c. A lack of any proper conveyance or condemnation of the right of way.
- 6        2. The court in which any proceeding is brought to reverse or declare void the  
7                    proceedings by which any project has been established, or to enjoin the tax levied to  
8                    pay therefor for the project, on application of either party, shall order an examination or  
9                    survey of the premises, ~~or survey of the same~~, or both, as ~~may be~~ deemed necessary.  
10                  The court, on a final hearing, shall enter ana just and equitable order ~~which is just and~~  
11                  ~~equitable~~, and may order the tax or any part thereof of the tax to remain on the tax lists  
12                  for collection, or, if the tax were paid under protest, may order, ~~if justice requires~~, the  
13                  whole or any part thereof of the tax to be refunded. The costs of ~~such~~ the proceedings  
14                  ~~shall~~ must be apportioned among the parties as ~~justice may require~~ the court deems  
15                  appropriate.

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

18        **County may pay share of drainage taxes on tax deed lands.**

19        If lands acquired by the county by tax deed are assessed drainage taxes, the county  
20        commissioners shall pay the taxes from general funds if, based on a due appraisal, the value of  
21        the land exceeds the total of the delinquent taxes for which foreclosure proceedings were  
22        instituted plus the total drainage tax assessment. If the total taxes assessed at foreclosure plus  
23        drainage taxes exceed the value of the land, the county may not pay the drainage  
24        assessments. However, upon the sale of the land, any excess of the sales price over the  
25        amount of taxes for which the foreclosure proceedings were instituted must be paid to the  
26        drainage district to the extent of the drainage taxes due. Any income from the property must be  
27        first credited to the general taxes, and any surplus income must be paid to the drainage district  
28        to the extent of the drainage taxes due.

29        **SECTION 27. AMENDMENT.** Section 61-16.1-33 of the North Dakota Century Code is  
30        amended and reenacted as follows:

1        **61-16.1-33. Water resource board may apportion assessments for benefits of a**  
2 **project.** Apportioning assessments against a county or city or any tract of land benefited.

3        Whenever

4        1. ~~If a water resource board discovers or ascertains that the county, a township, or city~~  
5 ~~therein, or that a~~ political subdivision; or any tract, parcel, or piece of land is being  
6 benefited by a project and ~~that the county or such township, municipality,~~ the political  
7 subdivision, tract, piece, or parcel of land was not included in the project area  
8 assessed for the cost of construction and maintenance of the project when  
9 established, the board shall commence proceedings for reassessment of lands  
10 originally assessed for the cost of establishing and constructing such project and shall  
11 apportion and assess the part of the balance remaining unpaid, if any, of the cost of  
12 such the project, and the expense of maintenance, ~~which such county, township, or city~~  
13 the political subdivision and each tract of land found to be benefited thereby by the  
14 project should bear.

15        2. ~~Before making such reassessment or reapportionment of~~ reassessing and  
16 reapportioning benefits under this section, the board shall hold a hearing ~~for the~~  
17 ~~purpose of determining~~ to determine the benefits of the project to the county, ~~such~~  
18 ~~township, or city~~ political subdivision and to each tract, piece, or parcel of land being  
19 benefited. At least ten days' notice of the hearing shall be given by publication in the  
20 newspaper ~~or newspapers~~ having general circulation in the county, and by mailing  
21 notice ~~thereof~~ of the hearing to each owner of land assessed for the cost of  
22 construction and maintenance when the project was established, ~~and by mailing such~~  
23 ~~notice~~; to the governing body of the county, township, municipality, political subdivision  
24 found to be benefited since the establishment of the project; and to the owner, as  
25 determined by the records in the office of the recorder or county treasurer of each  
26 tract, piece, or parcel of land found to be benefited since the establishment of the  
27 project. The provisions of this chapter governing the original determination of benefits  
28 and assessment of costs shall apply to the reassessment and assessment of benefits  
29 ~~carried out under the provisions of~~ under this section.

30        **SECTION 28. AMENDMENT.** Section 61-16.1-34 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons.**

2           ~~A district may, at any~~Any time after entering into a contract for a project to be financed in  
3 whole or in part by special assessments, a water resource district may issue temporary and  
4 definitive warrants on the project fund, created for that purpose, ~~in the manner and subject to~~  
5 ~~the limitations prescribed in~~ accordance with section 40-24-19. If the warrants are issued to  
6 finance a sewer or water project, the net revenues derived from the imposition of service  
7 charges to be imposed and collected ~~with respect thereto as provided in~~ accordance with  
8 section 40-22-16 may be pledged to payment of ~~these~~the warrants, except that the first maturity  
9 date of any ~~such warrant shall~~of the warrants may not be less than two years from the date of  
10 issuance. Warrants issued under this section ~~shall~~must be in such amounts as in the judgment-  
11 of the water resource board ~~will be~~determines necessary for the project. The warrants ~~shall~~must  
12 bear interest at a rate ~~or rates,~~ and be sold at a price, resulting in an average net interest cost  
13 not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling  
14 on warrant issues sold at public sale or to the state of North Dakota or any of ~~its~~the state's  
15 agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the  
16 case may be, may be attached to the warrants. The warrants ~~shall~~must state upon ~~their~~the  
17 warrants' face the purpose for which ~~they~~the warrants are issued and the project fund from  
18 which ~~they~~the warrants are payable ~~and shall~~. The warrants also must be signed by the  
19 chairman of the water resource board and countersigned by the secretary of the water resource  
20 district. The warrants ~~shall~~must be payable serially in such amounts as the board determines,  
21 extending over a period of not more than thirty years.

22           **SECTION 29. AMENDMENT.** Section 61-16.1-39.2 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **61-16.1-39.2. Maintenance of project - Exception.**

25           If, upon receipt of a petition meeting the requirements of section 61-16.1-39.1, or upon ~~the~~a  
26 water resource board's own motion, the board determines a project established under the  
27 provisions of this chapter requires maintenance, the board may provide the required  
28 maintenance by using the same method used initially to finance the project. Unless otherwise  
29 provided by law or agreement, the participation of the state in financing the initial project does  
30 not bind the state to finance any maintenance. Any maintenance financed through special

1 assessments may not exceed the maximum levy established by section 61-16.1-45. This  
2 section does not apply to maintenance of assessment drains.

3 **SECTION 30. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **61-16.1-42. Drains along and across public roads and railroads.**

6 Drains may be laid along, within the limits of, or across any public road or highway, but not  
7 to the injury of ~~such~~the road. ~~In instances where it is necessary to run a drain across a~~  
8 ~~highway,~~if a water resource board notifies the department of transportation, the board of county  
9 commissioners, or the board of township supervisors, ~~as the case may be, when notified by the~~  
10 ~~water resource board to do so, it is necessary to run a drain across a highway, the department~~  
11 ~~or board shall make and pay for~~ necessary openings through the road or highway ~~at its own~~  
12 ~~expense, and shall build and keep in repair~~maintain all required culverts or bridges as provided  
13 under section 61-16.1-43. ~~In instances where~~if drains are laid along or within the rights of way  
14 of roads or highways, the drains ~~shall~~must be maintained and kept open by and at the expense  
15 of the water resource district concerned. A drain may be laid along any railroad when necessary,  
16 but not to the injury of the railroad, ~~and when it is necessary to run a drain across the.~~ When  
17 notified by a water resource board that a drain must cross a railroad, the railroad company,  
18 ~~when notified by the water resource board to do so,~~ shall make the necessary opening through  
19 ~~such~~the railroad, ~~shall~~ build the required bridges and culverts, and ~~shall keep them~~the  
20 openings, bridges, and culverts in repair.

21 **SECTION 31. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **61-16.1-43. Construction of bridges and culverts in connection with a drain - Costs.**

24 The

25 1. A water resource board shall construct ~~such~~ bridges or culverts over or in connection  
26 with a drain as ~~in its judgment may be~~the board deems necessary to furnish passage  
27 from one part to another of any private farm or tract of land intersected by ~~such~~the  
28 drain. The cost of ~~such construction shall~~constructing the bridge or culvert must be  
29 charged as part of the cost of constructing the drain, ~~and any such.~~ The bridge, or  
30 culvert, or passageway shall must be maintained under the authority of the water

1 resource board, and the necessary expense shall be deemed a cost of maintaining the  
2 bridge or culvert is part of the cost of maintenance maintaining the drain.

3 2. Whenever any bridge or culvert is to be constructed on a county or township highway  
4 system over and across or in connection with a drain, the cost of constructing such the  
5 bridge or culvert shall must be shared in the following manner:

6 1. a. The state water commission may, ~~if funds are available, participate in accordance~~  
7 ~~with such rules and regulations as it may prescribe~~ provide funding according to  
8 the commission's rules and policies. The remaining cost shall be borne forty  
9 percent by the county and sixty percent by the district which has created the  
10 need for such construction.

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

15 3. c. Where such bridges or culverts are constructed with federal financial  
16 participation, the costs exceeding the amount of the federal participation shall be  
17 borne by the district and county according to the provisions of this section, as the  
18 case may be.

19 **SECTION 32. AMENDMENT.** Section 61-16.1-45 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **61-16.1-45. Maintenance of ~~drainage projects~~ assessment drains.**

22 1. ~~If it is desired to provide for maintenance of an assessment drain in whole or in part by~~  
23 ~~means of special assessments, the~~ A water resource district may provide for  
24 maintenance of an assessment drain through a special assessment. The levy in any  
25 year for the maintenance may not exceed four dollars per acre [.40 hectare] on any  
26 agricultural lands benefited by the drain. The district, ~~at its own discretion,~~ may  
27 utilize either of the following methods for levying special assessments for the  
28 maintenance:

29 a. Agricultural lands that carried the highest assessment when the drain was  
30 originally established, or received the most benefits under a reassessment of  
31 benefits, may be assessed the maximum amount of four dollars per acre



1                   [.40 hectare]. The assessment of other agricultural lands in the district must be  
2                   based upon the proportion that the assessment of benefits at the time of  
3                   construction or at the time of any reassessment of benefits bears to the  
4                   assessment of the benefits of the agricultural land assessed the full four dollars  
5                   per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any  
6                   one year as the ratio of the benefits under the original assessments or any  
7                   reassessment bears to the assessment of agricultural lands bearing the highest  
8                   assessment.

9                   b. Agricultural lands must be assessed uniformly throughout the entire assessed  
10                  area. Nonagricultural property must be assessed an amount not to exceed two  
11                  dollars for each five hundred dollars of taxable valuation of the nonagricultural  
12                  property.

13                2. In case the maximum levy or assessment on agricultural and nonagricultural property  
14                for any year will not produce an amount sufficient to cover the cost of ~~cleaning out and~~  
15                ~~repairing~~maintaining the drain, a water resource board may accumulate a fund in an  
16                amount not exceeding the sum produced by the maximum permissible levy for six  
17                years.

18                3. If the cost of, or obligation for, the ~~cleaning and repairing~~maintenance of ~~any~~a drain  
19                exceeds the total amount that may be levied by the board in any six-year period, the  
20                board ~~shall obtain~~may not obligate the district for the maintenance costs unless the  
21                board receives the approval of the majority of the landowners as determined by  
22                ~~chapter 61-16.1~~section 61-16.1-20 before obligating the district for the costs.

23                4. Funds raised through a maintenance levy under this section may be used only for  
24                maintenance.

25                **SECTION 33. AMENDMENT.** Section 61-16.1-46 of the North Dakota Century Code is  
26                amended and reenacted as follows:

27                **61-16.1-46. Establishing new drains in location of invalid or abandoned drain.**

28                If any of the proceedings for the location, establishment, or construction of ~~any drain under~~  
29                ~~the provisions of this chapter shall have~~an assessment drain has been enjoined, vacated, set  
30                aside, declared void, or voluntarily abandoned by the water resource board, ~~for any reason~~  
31                ~~whatsoever~~, the board may proceed under the provisions of sections 61-16.1-17 through

1 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as  
2 the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly  
3 maintained ~~shall be properly~~ is considered abandoned. When a new drain is established at  
4 substantially the same location, the board shall ascertain the real value of services rendered,  
5 moneys expended, and work done under the invalid or abandoned proceedings, and the extent  
6 to which the ~~same services, moneys, and work~~ contributes to the construction and completion of  
7 the new drain. The board then shall ~~then~~ issue warrants in an amount not exceeding the value  
8 to the new drain of the work completed on the invalid or abandoned drain and shall deliver  
9 ~~such~~ the new warrants, pro rata, to the owners or holders of old warrants or bonds issued under  
10 the invalid or abandoned drainage proceedings, upon the surrender of ~~such~~ the old warrants or  
11 bonds by the ~~holder of warrant or bond~~ holders thereof.

12 **SECTION 34. AMENDMENT.** Section 61-16.1-47 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **61-16.1-47. Drain kept open and in repair by water resource board.**

15 ~~All assessment drains that have been constructed in any district~~ A water resource district  
16 has authority over all assessment drains, except township drains, ~~shall be under the charge of~~  
17 ~~the water resource board and it shall be the duty of~~ constructed in the district, and the water  
18 resource board to shall keep ~~these~~ the drains open and in good repair. ~~It shall be the mandatory~~  
19 ~~duty of the board, within~~ Within the limits of available funds, ~~to~~ the board shall clean out and  
20 repair any assessment drain when requested to do so by petition of the affected landowners  
21 having fifty percent or more of the possible votes, as determined ~~according to~~ under section  
22 61-16.1-20.

23 **SECTION 35. AMENDMENT.** Section 61-16.1-48 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **61-16.1-48. Assessment of costs of cleaning and repairing drains.**

26 The cost of cleaning out and repairing an assessment drain or a drainage structure  
27 constructed by any governmental entity for which no continuing funds for maintenance are  
28 available or which does not meet the definition of maintenance must be assessed pro rata  
29 against the lands benefited in the same proportion as the original assessment of the costs in  
30 establishing ~~such~~ the drain, or in accordance with any reassessment of benefits ~~if there has~~  
31 ~~been a reassessment of benefits under the provisions of section 61-16.1-26~~ made. If no

1 assessment for construction costs or reassessment of benefits has been made, the water  
2 resource board shall make assessments for the cost of the cleaning and repairing such ~~drain or~~  
3 ~~drainage structure constructed by any governmental entity for which no continuing funds for~~  
4 ~~maintenance are available~~ in accordance with the provisions of this chapter for the  
5 establishment of a new project. The governing body of any incorporated city, by agreement with  
6 the board, ~~is authorized to~~ may contribute to the cost of cleaning out, repairing, and maintaining  
7 a drain in excess of the amount assessed under this section, and ~~such~~ the excess contribution  
8 may be expended ~~for such purposes~~ by the board for cleaning out, repairing, and maintaining  
9 the drain.

10 **SECTION 36.** A new section to chapter 61-16.1 of the North Dakota Century Code is  
11 created and enacted as follows:

12 **Dissolution of drainage district - Abandonment of drain - Return of unexpended**  
13 **assessments.**

14 The owners of property subject to at least fifty-one percent of the cost of maintaining the  
15 drain, as determined under section 61-16.1-20, may petition the board for the abandonment and  
16 dissolution of the drain. Upon receipt of the petition, the board shall call a public hearing on the  
17 petition. If the board finds the number of valid signatures on the petition is sufficient, and the  
18 drainage district has no outstanding indebtedness, the board shall declare the drain to be  
19 abandoned and the drainage district to be dissolved. The board also shall record the declaration  
20 in the board's minutes, publish the declaration in a newspaper having wide circulation in the  
21 county in which the drain is located, and return all unexpended assessments collected for the  
22 maintenance of the drain to the owner of the assessed property on a pro rata basis in proportion  
23 with the amount originally assessed. If the drainage district extends into two or more water  
24 resource districts, the water resource boards shall convene in joint session to satisfy the  
25 requirements of this section. An abandoned drain may be re-established in whole or in part in  
26 the same manner as a new drain may be established.

27 **SECTION 37.** A new section to chapter 61-16.1 of the North Dakota Century Code is  
28 created and enacted as follows:

29 **Consolidation of drainage district into water resource district.**

30 1. Upon resolution of a board of county commissioners or water resource board, or upon  
31 the filing with a board of county commissioners of a petition containing the signatures

1 of landowners possessing at least fifteen percent of the voting rights in one or more  
2 drainage districts as determined under section 61-16.1-20, the board of county  
3 commissioners shall set a date for a hearing on the establishment or expansion of a  
4 water resource district to include the property contained within the drainage districts.  
5 The board shall publish notice of the time, place, and purpose of the hearing once  
6 each week for two consecutive weeks in a newspaper of general circulation in the  
7 county. The second publication must be not less than ten days and not more than  
8 twenty days before the date set for the hearing. If special assessments remain  
9 outstanding on any property within a drainage district to be affected by the hearing, the  
10 board shall notify all landowners of record subject to the special assessments by  
11 ordinary mail at least ten days before the date set for the hearing. If a majority of  
12 affected landowners, as determined under section 61-16.1-20, file written objections to  
13 the establishment or expansion of the water resource district at the hearing, the  
14 proceedings must be discontinued. Otherwise, the board shall file with the state water  
15 commission a petition signed by a majority of the board for the establishment or  
16 expansion of the water resource district, and the subsequent proceedings must  
17 comply with this chapter and chapter 61-16.

18 2. If the requested water resource district is established or expanded, the board shall  
19 dissolve the drainage districts by resolution and transfer all property, including funds,  
20 of the dissolved districts to the water resource district. The funds may be expended  
21 separately or jointly with other funds on projects or activities of the water resource  
22 district which are of specific benefit to property within the dissolved drainage districts,  
23 or the funds may be prorated among the properties within the dissolved drainage  
24 districts and credited to the properties in proportion with the amount originally  
25 assessed as a credit against subsequent assessments by the water resource district.

26 3. Notwithstanding subsection 2, a drainage district may not be dissolved if it has any  
27 outstanding warrants, bonds, or other obligations unless the order of the board  
28 dissolving the district provides for a continuance of assessments on properties within  
29 the dissolved district to pay outstanding obligations or an assumption of the obligations  
30 by the established or expanded water resource district. If the water resource district  
31 assumes the obligations, the obligations must be spread over properties within the

1           water resource district. Sinking funds created to pay the obligations must be continued  
2           in force by the water resource district until the obligations are liquidated.

3           **SECTION 38.** A new section to chapter 61-16.1 of the North Dakota Century Code is  
4 created and enacted as follows:

5           **Permit to drain surface waters required - Penalty.**

- 6           1. Before draining a pond; slough; lake; or sheetwater; or any series of ponds, sloughs,  
7           lakes, or sheetwater; with a watershed area comprising eighty acres [32.37 hectares]  
8           or more, a person shall secure a permit to do so. As used in this section, "sheetwater"  
9           means shallow water that floods land not normally subject to standing water. The  
10           permit application must be submitted to the state engineer. The state engineer shall  
11           refer the application to the water resource district, or multiple water resource districts,  
12           within which is found a majority of the watershed or drainage area of the pond, slough,  
13           lake, or sheetwater for consideration and approval. The state engineer may require  
14           applications approved by the district and proposing drainage of statewide or  
15           interdistrict significance to be subject to final approval by the state engineer.
- 16           2. A permit required under this section may not be granted until an investigation,  
17           conducted and paid for by the permit applicant, discloses the quantity of water to be  
18           drained will not flood or adversely affect downstream lands. If the investigation shows  
19           the proposed drain will flood or adversely affect lands of downstream landowners, the  
20           water resource board may not issue a permit until flowage easements are obtained.  
21           The flowage easements must be filed for record in the office of the recorder of the  
22           county in which the lands are situated.
- 23           3. This section does not apply to the construction or maintenance of an existing or  
24           prospective drain constructed under the supervision of a state or federal agency, as  
25           determined by the state engineer.
- 26           4. Any person draining, or causing to be drained, a pond; slough; lake; or sheetwater; or  
27           any series of ponds, sloughs, lakes, or sheetwater; with a watershed area comprising  
28           eighty acres [32.37 hectares] or more, without first securing a permit to do so is liable  
29           for all damage sustained by any person caused by the drain, and is guilty of an  
30           infraction.
- 31           5. The state engineer may adopt rules for temporary permits for emergency drainage.

1       **SECTION 39.** A new section to chapter 61-16.1 of the North Dakota Century Code is  
2 created and enacted as follows:

3       **Permit to drain subsurface waters required - Penalty.**

- 4       1. Installation of a subsurface water management system requires a permit. A subsurface  
5 water management system that uses surface intakes must be permitted exclusively  
6 under this section if the system will have a drainage coefficient of three-eighths of an  
7 inch [0.95 centimeters] or less. Subsurface water management systems that use  
8 surface intakes must be permitted exclusively under section 38 of this Act if the system  
9 will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
- 10      2. a. The state engineer shall develop an application form for a permit required under  
11 this section. A person seeking to construct a subsurface water management  
12 system that requires a permit under this section must submit a completed  
13 application to the water resource district, or multiple water resource districts,  
14 within which is found a majority of the land area for consideration and approval.  
15 The water resource board may charge permit applicants a fee up to one hundred  
16 fifty dollars. Water resource boards shall forward copies of all approved permits  
17 to the state engineer.
- 18      b. Upon submission of a completed application for a permit, the water resource  
19 board immediately shall give notice and a copy of the submission via certified  
20 mail to each owner of land within one mile [1.61 kilometers] downstream of the  
21 proposed subsurface water management system outlet unless the distance to the  
22 nearest waterway depicted as a perennial or intermittent stream or river on a  
23 United States geological survey topography map, assessment drain, natural  
24 watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case  
25 notice and a copy of the submission must be given immediately to each owner of  
26 land between the outlet and the nearest assessment drain, natural watercourse,  
27 slough, or lake. The notice requirement in this section must be waived if the  
28 applicant presents signed, notarized letters of approval from all downstream  
29 landowners entitled to notice in this subsection.
- 30      3. a. If the water resource board receives notarized letters of approval from all  
31 downstream landowners entitled to notice, the board shall approve the completed

1           permit application as soon as practicable but no later than thirty days after receipt  
2           of the last letter. Otherwise, the water resource board shall review the completed  
3           application at its next meeting that is at least thirty days after receipt of the  
4           application. The board shall consider any written, technical evidence provided by  
5           the applicant or a landowner notified under subsection 2 addressing whether the  
6           land of a notified landowner will be flooded or unreasonably harmed by the  
7           proposed subsurface water management system. For purposes of this section  
8           "technical evidence" means written information regarding the proposed  
9           subsurface water management system, prepared after consideration of the  
10          design and physical aspects of the proposed system, and any adverse hydraulic  
11          effects, including erosion, flood duration, crop loss, and downstream water  
12          control device operation impacts, which may occur to land owned by a landowner  
13          provided under subsection 2. Technical evidence must be submitted to the permit  
14          applicant, notified landowners, and the board within forty-five days of the receipt  
15          of the completed permit application by the board. A notified landowner may not  
16          object to the proposed system unless the landowner presents technical evidence  
17          under this subsection.

18          b. If the board finds, based on technical evidence, the proposed subsurface water  
19          management system will flood or unreasonably harm lands of a landowner  
20          notified under subsection 2, the board may require the applicant to obtain a  
21          notarized letter of approval before issuing a permit for the system. The board may  
22          not require a letter of approval for any land downstream of a system that outlets  
23          into an assessment drain, natural watercourse, or pond, slough, or lake if notified  
24          landowners did not provide technical evidence to the district.

25          c. A water resource district may attach reasonable conditions to an approved permit  
26          for a subsurface water management system that outlets directly into an  
27          assessment drain or public highway right of way. For purposes of this subsection,  
28          "reasonable conditions" means conditions that address the outlet location, proper  
29          erosion control, reseeding of disturbed areas, installation of riprap or other ditch  
30          stabilization, and conditions that require all work to be done in a neat and  
31          professional manner. Any condition to locate the project a minimum distance from

1           rural water supply lines may not extend beyond an existing easement for lines, or  
2           no greater than twenty feet [6.1 meters] from either side of the water line if the  
3           rural water line was installed under a blanket easement.

4           d. A water resource district may require a subsurface water management system  
5           granted a permit under this section to incorporate a control structure at the outlet  
6           into the design of the system and may require the control structure be closed  
7           during critical flood periods.

8           e. A water resource district board may not deny a completed permit application  
9           under this section unless the board determines, based on technical evidence  
10          submitted by a landowner notified under subsection 2, the proposed water  
11          management system will flood or unreasonably harm land of a notified  
12          landowner, and a notarized letter of approval required by the board has not been  
13          obtained by the applicant. For purposes of this section, "unreasonable harm" is  
14          limited to hydraulic impacts, including erosion or other adverse impacts that  
15          degrade the physical integrity of a roadway or real property within one mile [1.61  
16          kilometers] downstream of the system's outlet. The board shall include a written  
17          explanation of the reasons for a denial of a completed application and notify, by  
18          certified mail, the applicant and all landowners notified under subsection 2 of the  
19          approval or denial.

20          f. The board may not deny a permit more than sixty days after receipt of the  
21          completed application for the permit. If the board fails to deny the permit  
22          application within sixty days of receipt, the permit application is deemed  
23          approved.

24          4. A denial of a completed permit application by a water resource district board may be  
25          appealed, under section 28-34-01, to the district court of the county in which the permit  
26          application was filed. The court may approve a completed permit application denied by  
27          a water resource district board or the state engineer if the application meets the  
28          requirements of this section.

29          5. A water resource district board may not be held liable to any person for issuing a  
30          permit under this section.



1       6. A person that installs a subsurface water management system requiring a permit  
2           under this section without first securing the permit is liable for all damages sustained  
3           by a person caused by the subsurface water management system.

4       7. A person that installs a subsurface water management system requiring a permit  
5           under this section without first securing the permit is guilty of an infraction.

6       **SECTION 40. 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 order or decision of the water  
11 resource board by any person aggrieved, except when another appeal process is established in  
12 this chapter. An appellant shall file an undertaking in the sum of two hundred dollars with  
13 ~~such~~the sureties as may be approvedrequired by the clerk of the district court to which the  
14 appeal is taken. The undertaking must be conditioned ~~that~~on the appellant will  
15 ~~prosecute~~prosecuting the appeal without delay and ~~will pay~~paying all costs adjudged against  
16 the appellant in the district court. The undertaking must be in favor of the water resource board  
17 as obligee, and may be sued on in the name of the obligee. The appeal must be taken to the  
18 district court of the county in which the land claimed to be affected adversely by the order or  
19 decision appealed from is located and is governed by the procedure provided in section  
20 28-34-01.

21       **SECTION 41. AMENDMENT.** Section 61-16.1-62 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **61-16.1-62. Validating organization and acts of water resource districts and county**  
24 **drain boards.**

25       ~~Nothing contained in this chapter shall be~~A provision of this chapter may not be construed  
26 as impairing, invalidating, or in any manner affecting the validity of warrants, bonds, obligations,  
27 acts, or proceedings of water resource districts or county drain boards which existed prior to the  
28 passage and approval of this chapter issued or taken before the effective date of the provision.

29       **SECTION 42. AMENDMENT.** Section 61-16.1-63 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **61-16.1-63. Penalty for violation of chapter.**

2       Any person violating any of the provisions of this chapter shall, if no other criminal penalty is  
3 ~~specifically provided, be~~ guilty of a class B misdemeanor unless another criminal penalty is  
4 provided specifically for the violation. The board may bring a civil action to recover damages  
5 resulting from a violation and the costs incurred by the board for the civil action.

6       **SECTION 43. REPEAL.** Sections 61-16.1-01 and 61-16.1-61 and chapters 61-21 and  
7 61-32 of the North Dakota Century Code are repealed.