

Introduced by

1 A BILL for an Act to create and enact section 61-21-01.1 of the North Dakota Century Code,
2 relating to designations of lateral drains; to amend and reenact sections 61-05-02.1 and
3 61-16.1-02, subsection 11 of section 61-16.1-09, sections 61-16.1-09.1, 61-16.1-15, 61-16.1-17,
4 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23, 61-16.1-24,
5 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-54, 61-21-01, 61-21-02, 61-21-24, 61-21-34,
6 61-21-50, 61-21-56, 61-21-65, and 61-21-67, subdivision g of subsection 4 of section
7 61-32-03.1, and subsection 3 of section 61-32-03.2 of the North Dakota Century Code, relating
8 to procedures and timelines for assessment projects undertaken by water resource boards; and
9 to repeal sections 61-16.1-01, 61-21-10, 61-21-11, 61-21-12, 61-21-13, 61-21-14, 61-21-15,
10 61-21-16, 61-21-17, 61-21-18, 61-21-20, 61-21-21, 61-21-22, 61-21-23, 61-21-25, 61-21-27,
11 61-21-29, 61-21-30, 61-21-31, 61-21-32, 61-21-32.1, 61-21-33, 61-21-36, 61-21-37, 61-21-38,
12 61-21-39, 61-21-40, 61-21-41, 61-21-42, 61-21-43, 61-21-43.1, 61-21-44, 61-21-45, 61-21-46,
13 61-21-47, 61-21-51, 61-21-52, 61-21-53, 61-21-55, 61-21-62, and 61-21-63 of the North Dakota
14 Century Code, relating to water resource boards, assessment procedures and requirements,
15 and drains.

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

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

19 **61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

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

1 irrigation district may not impact the authority of a water resource board to assess for drainage
2 projects under chapter 61-16.1 ~~or 61-21~~.

3 **SECTION 2. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

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

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

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

1 artificial channel when the watercourses or channels drain land within a practical
2 drainage area.

3 8. "Frivolous" means allegations and denials in any complaint filed with a district made
4 without reasonable cause and not in good faith.

5 8-9. "Lateral drain" means a drain constructed after the establishment of an original drain
6 or drainage system and which flows into the original drain or drainage system from
7 outside the limits of the original drain.

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

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

15 9-12. "Water resource board" or "board" means the water resource district's board of
16 managers.

17 **SECTION 3. AMENDMENT.** Subsection 11 of section 61-16.1-09 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 11. ~~Have, in addition to any powers provided in this chapter, the authority to~~
20 ~~construct~~Construct an assessment drain project in accordance with the ~~procedures and~~
21 provisions of ~~chapter 61-24~~this chapter.

22 **SECTION 4. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

25 4. A water resource board may undertake the snagging, clearing, and maintaining of
26 natural watercourses and the debrisment of bridges and low-water crossings. The board may
27 finance the project in whole or in part with funds raised through the collection of a special
28 assessment levied against the land and premises benefited by the project. The benefits of a
29 project must be determined in the manner provided in section ~~61-16.1-17~~61-16.1-18. Revenue
30 from an assessment under this section may not be used for construction of a drain or
31 reconstruction or maintenance of an existing assessment drain. Any question as to whether the

1 board is maintaining a natural watercourse or is constructing a drain or reconstructing or
2 maintaining an existing assessment drain must be resolved by the department of water
3 resources. All provisions of this chapter apply to assessments levied under this section except:

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

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

7 **SECTION 5. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **61-16.1-15. Financing projectInitiating project financed through revenue bonds,**
10 **general taxes, or special assessments - Apportionment of benefits**Bond required.

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

1 the petition must be signed by a sufficient number of the property owners of the city to satisfy
2 the board there is a public demand for the drain. If a petition under this section is approved but
3 the drain is not constructed, the water resource board may not require the petitioners to pay any
4 expenses incurred by the board related to the petition.

5 **SECTION 6. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-16.1-17. Financing of special improvementsAssessment projects - Procedure -**
8 **Engineer report.**

9 ~~When it is proposed to finance in whole or in part the construction of a project with a water~~
10 ~~resource board receives a petition or approves a motion to construct a project with funds raised~~
11 ~~through the collection of special assessments levied against lands and premises benefited by~~
12 ~~construction and maintenance of such project, the water resource board shall examine the~~
13 ~~proposed project, and if in its opinion, the water resource board decides further proceedings~~
14 ~~are warranted, it the board shall adopt a resolution and declare that it declaring constructing and~~
15 ~~maintaining the proposed project is necessary to construct and maintain the project. The~~
16 ~~resolution shall briefly state, identifying the nature and purpose of the proposed project, and~~
17 ~~shall designate designating a registered engineer to assist the board. For the purpose of making~~
18 ~~examinations or surveys, the board or it the board's employees, after written notice to each~~
19 ~~landowner, may enter upon any land on which the proposed project is located or any other~~
20 ~~lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications,~~
21 ~~and total estimated costs of the proposed project and estimates of the total cost thereof. The~~
22 ~~estimate of costs prepared by the engineer shall must include acquisition of right rights of way~~
23 ~~and shall be in sufficient detail to allow be sufficiently detailed for the board to determine the~~
24 ~~probable share of the total costs that will to be assessed against each of the affected~~
25 ~~landowners in the proposed project assessment district.~~

26 **SECTION 7. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-18. Hearing on assessment project - Notice - Contents.**

29 1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
30 satisfying the requirements of section 61-16.1-21, the water resource board shall fix a
31 date and place for public hearing on the proposed project. The place of hearing must

1 be in the vicinity of the proposed project and must be convenient and accessible for
2 the majority of the landowners subject to assessment for the project or whose property
3 is subject to condemnation for the proposed project.

4 2. The board shall cause a complete list of the benefits and assessments to be made,
5 setting forth each county, township, or city assessed in its corporate capacity as well
6 as each lot, piece, or parcel of land assessed; ~~the amount each is~~would be benefited
7 by the ~~improvement~~proposed project; and the amount assessed against each. At least
8 ten days before the hearing, the board shall file with the county auditor of each county
9 ~~or counties~~ in which the project is or will be located the list showing the percentage
10 assessment against each parcel of land benefited by the proposed project and the
11 approximate assessment in terms of money apportioned thereto. ~~Notice of the filing~~
12 ~~must be included in the notice of hearing. Notice to each parcel.~~

13 3. The water resource board shall provide notice of the hearing which must contain:
14 a. Include a copy of the petition, if any, and the resolution of the board as well as;
15 b. Specify the time and place where the board will conduct of the hearing. The notice
16 of hearing must specify the general nature;
17 c. Identify the beginning, terminus, and general course of the project as finally
18 determined by the engineer and the board. The notice of hearing must also
19 specify;
20 d. Specify when and where votes concerning the proposed project may be filed. The
21 ;
22 e. Include the assessment list showing the percentage assessment against each
23 parcel of land benefited by the proposed project and the approximate
24 assessment in terms of money apportioned thereto, along with a copy of the
25 notice of the hearing, must be to each parcel;
26 f. Be mailed with a ballot to vote on the proposed project to each affected
27 landowner at the landowner's address as shown by the tax rolls of the county or
28 counties in which the affected property is located. The board may send the
29 assessment list and notice and ballot by regular mail attested by an affidavit of
30 mailing signed by the attorney or secretary of the board. The board shall cause
31 the notice of hearing to be; and

1 g. ~~Be~~ published once a week for two consecutive weeks in the newspaper or
2 newspapers of general circulation in the area in which the affected landowners
3 reside and in the official county newspaper of each county in which the benefited
4 lands are located.

5 4. The date set for the hearing must ~~not be less than~~ at least twenty days after the mailing
6 of the notice ~~the notice is mailed~~. A record of the hearing must be made by the
7 board, ~~including~~ include a list of affected landowners present in person or by agent,
8 and ~~the record must be preserved in the minutes of the meeting. Affected-~~
9 ~~landowners,~~ Each affected landowner and the governing body of any county, township,
10 or city to be assessed; must be informed at the hearing of the probable total cost of
11 the project ~~and their individual share, the share of the cost the landowner or governing~~
12 body will be assessed, and the portion of ~~their~~ landowner or governing body's property,
13 if any, to be condemned for the project.

14 **SECTION 8. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-16.1-19. Voting on proposed projects - Notice of result.**

17 At the hearing on an assessment project, the affected landowners, and any county,
18 township, or city to be assessed, ~~must~~ must be informed when and where votes
19 concerning the proposed project may be filed. Affected landowners, and the governing body of
20 any county, township, or city to be assessed, have thirty days after the date of the hearing to file
21 their votes for or against the project with the secretary of the water resource board ~~concerning-~~
22 ~~the project. If a vote is mailed to the secretary, the vote is timely if the vote is received within the~~
23 voting period. Once the deadline for filing votes has been reached, ~~no more votes may be filed-~~
24 ~~and no person may withdraw a vote~~ votes may not be filed or withdrawn. Any withdrawal of a
25 vote concerning the proposed project before that time must be in writing. When ~~the votes have-~~
26 ~~been filed and the deadline for filing votes has passed, the board immediately shall immediately-~~
27 determine whether the project is approved. If the board finds ~~that~~ fifty percent or more of the
28 total votes filed are against the proposed project, ~~then~~ the vote constitutes a bar against
29 proceeding further with the project. If the board finds ~~that~~ the number of votes filed against the
30 proposed project is less than fifty percent of the votes filed, the board shall issue an order
31 establishing the proposed project and ~~may proceed,~~ after complying with the requirements of

1 sections 61-16.1-21 and 61-16.1-22, ~~to~~may contract or provide for the construction or
2 maintenance of the project in substantially the manner and according to the forms and
3 procedure provided in title 40 for the construction of sewers within municipalities. The board
4 may enter into an agreement with any federal or state agency under the terms of which the
5 contract for the project is to be let by the federal agency, the state agency, or a ~~combination~~
6 ~~thereof~~both. ~~In projects in which~~If there is an agreement that a party other than the board will let
7 the contract, the board may dispense with all ~~of~~ the requirements of title 40. Upon making an
8 order establishing a project or ~~denying establishment of~~determining the vote bars establishing a
9 project, the board shall publish notice of the order or determination in a newspaper of general
10 circulation in the area in which the affected landowners reside and in the official county
11 newspaper of each county in which the benefited lands are located. The notice must advise
12 affected landowners of their right to appeal. Any right of appeal begins to run on the date of
13 publication of the notice. ~~As used in this section, "board" means water resource board.~~

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

16 **61-16.1-20. Voting right or powers of landowners.**

17 ~~In order that there may be~~The allocation of voting rights among affected landowners on the
18 question of establishing a proposed project must provide a fair ~~relation~~relationship between the
19 amount of liability for assessments and the power of objecting to the establishment of a
20 ~~proposed~~the project, ~~the voting rights of affected landowners on the question of establishing the~~
21 ~~project are as provided in this section.~~ The landowner or landowners of tracts of land affected
22 by the project. Affected landowners have one vote for each dollar of assessment that the land is
23 subject to or one vote for each dollar of the assessed valuation of land condemned for the
24 project, as determined in accordance with title 57. The governing body of any county, township,
25 or city to be assessed also has one vote for each dollar of assessment against suchthe county,
26 township, or city. There may be only one vote for each dollar of assessment, regardless of the
27 number of owners of sucha tract of land. Whereif there is more than one owner of ~~such~~the land
28 exists, the votes must be prorated among themthe owners in accordance with each owner's
29 property interest. A written power of attorney authorizes an agent to protest a project on behalf
30 of any affected landowner ~~or landowners~~.

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

3 **61-16.1-21. Assessment of cost of project Calculating benefits and assessments -**
4 **Certification.**

5 Whenever the

6 1. When a water resource board proposes to make any special assessment under the
7 provisions of this chapter, the board, prior to before the hearing required under section
8 61-16.1-18, shall inspect ~~any and~~ all lots and parcels of land; which may be subject to
9 assessment and shall determine from the inspection the particular lots and parcels of
10 lands which, in the opinion of the board, will be ~~especially~~ benefited by the
11 construction of the work for which the assessment is made ~~and~~. The board shall
12 ~~asses~~determine the proportion of the total cost of acquiring right of way and
13 constructing and maintaining ~~such improvement~~the project in accordance with, but not
14 exceeding, the benefits received ~~but not exceeding such benefits~~, against:

15 4. a. Any county, township, or city, in its corporate capacity, which may be benefited
16 directly or indirectly ~~thereby~~by the project.

17 2. b. Any lot, piece, or parcel of land which is directly benefited by ~~such~~
18 ~~improvement~~the project.

19 2. In determining benefits the board shall consider, among other factors, property values,
20 degree of improvement of properties, and productivity, ~~and the water management~~
21 ~~policy as expressed in section 61-16.1-15~~. Property belonging to the United States
22 ~~shall be~~ exempt from ~~such assessment under this chapter~~, unless the United States
23 has provided for the payment of any assessment ~~which may be levied against it~~the
24 property for benefits received. Benefited property belonging to counties, cities, school
25 districts, park districts, and townships ~~shall not be~~ not exempt from ~~such assessment~~
26 under this chapter, and political subdivisions whose property is ~~so~~ assessed shall
27 provide for the payment of ~~such~~the assessments, installments thereof, and interest
28 ~~thereon~~, by the levy of taxes according to law. Any county, township, or city assessed
29 in its corporate capacity for benefits received shall provide for the payment of ~~such~~the
30 assessments, installments thereof, and interest ~~thereon~~ from ~~it~~the political
31 subdivision's general fund or by levy of a general property tax against all the taxable

1 property therein in the jurisdiction in accordance with law. ~~No tax limitation Tax~~
2 limitations provided by any statute of this state shall do not apply to tax levies made by
3 any such political subdivision for the purpose of paying any special assessments
4 made ~~in accordance with the provisions of~~ under this chapter. There shall be attached
5 to the list of assessments a

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

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

15 **61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of**
16 **assessments - Confirmation of assessment list - Filing.**

- 17 1. After entering an order establishing the project, the water resource board shall cause
18 the assessment list to be published once each week for three successive weeks in the
19 newspaper or newspapers of general circulation in the district and in the official county
20 newspaper of each county in which the benefited lands are located together with a
21 notice of the time when, and place where, the board will meet to hear objections to any
22 assessment by any interested party, or an agent or attorney for that party. The board
23 also shall mail a copy of the notice of the hearing in an envelope clearly marked
24 "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as
25 shown by the tax rolls of the county or counties in which the affected property is
26 located; provide notice of a hearing at which the board will meet to hear objections to
27 the proposed assessments from any interested party or agent for an interested party.

28 The notice must:

- 29 a. Include a copy of the order establishing the project;
30 b. Specify the time and place of the hearing;

- 1 c. Identify the beginning, terminus, and general course of the project as finally
2 determined by the engineer and the board;
- 3 d. Include the assessment list showing the percentage assessment against each
4 parcel of land benefited by the proposed project and the approximate
5 assessment in terms of money apportioned;
- 6 e. Be mailed to each affected landowner at the landowner's address as shown by
7 the tax rolls of the county in which the affected property is located. The board
8 may send the assessment list and notice by regular mail attested by an affidavit
9 of mailing signed by the attorney or secretary of the board; and
- 10 f. Be published once a week for two consecutive weeks in the newspaper of
11 general circulation in the area in which the affected landowners reside and in the
12 official county newspaper of each county in which the benefited lands are
13 located.
- 14 2. ~~The date set for the hearing may not~~must ~~be less than thirty~~at least twenty days after
15 ~~the mailing of the notice is mailed.~~ At the hearing, the board may ~~make such~~
16 ~~alterations in~~alter the assessments as ~~in its opinion may be~~the board deems just and
17 necessary to correct any error in the assessment but ~~must~~shall make the aggregate of
18 all assessments equal to either the total amount required to pay the entire cost of the
19 work for which the assessments are made, or the part of the cost to be paid by special
20 assessment. An assessment may not exceed the benefit as determined by the board
21 to the parcel of land or political subdivision assessed. The board ~~then~~ shall ~~then~~
22 confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate
23 ~~that the same~~stating the list is correct as confirmed by the board and shall file the list
24 in the office of the secretary.

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

27 **61-16.1-23. Appeal to department of water resources.**

28 ~~After~~Within ten days after the hearing provided for in section 61-16.1-22, ~~affected:~~

- 29 1. Affected landowners and any political subdivision subject to assessment, having not
30 less than ~~twenty~~thirty-three percent of the possible votes as determined by section
31 61-16.1-20, ~~whewhich~~ believe the assessment was not made fairly or equitably or the

1 project is not located or designed properly, may appeal to the department of water
2 resources by petition, ~~within ten days after the hearing on assessments,~~ to make a
3 review of the assessments and to examine the location and design of the proposed
4 project. Upon receipt of the petition the department shall examine the lands assessed
5 and the location and design of the proposed project, and if it appears the assessments
6 were not made equitably, the department may correct the assessments, and the
7 department's correction and adjustment of the assessment is final. If the department
8 believes the project was located or designed improperly, the department may order a
9 relocation and redesign that must be followed in the construction of the proposed
10 project.

11 2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the
12 costs of the department in the matter, any landowner or political subdivision claiming
13 the landowner or political subdivision will receive no benefit from the construction of a
14 new project may appeal that issue to the department ~~within ten days after the hearing~~
15 ~~on assessments.~~ Upon an appeal by an individual landowner or political subdivision,
16 the department may determine whether there is any benefit to the landowner or
17 political subdivision, but not the specific amount of benefit. The determination of the
18 department regarding whether there is a benefit is final.

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

21 **61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

22 After the requirements of this chapter have been satisfied and a contract and bond for any
23 work for which a special assessment is to be levied have been approved by the water resource
24 board, the board may direct special assessments to be levied for the payment of appropriate
25 costs, and the secretary shall certify to the board the items of total cost to be paid by special
26 assessments so far as ~~they~~the costs have been ascertained. The certificate ~~shall~~must include
27 the estimated construction cost under the terms of any contract; for the project; a reasonable
28 allowance for the cost of extra work ~~which~~that may be authorized under the plans and
29 specifications; acquisition of right of way; engineering, fiscal agents' and attorney's fees for ~~any~~
30 services in connection with the authorization and financing of the ~~improvement;~~project; cost of
31 publication of required notices; ~~and;~~ printing of improvement warrants; cost necessarily paid for

1 damages caused by ~~such~~the improvement; interest during the construction period; and all
2 expenses incurred in making the improvement and levy of assessments.

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

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

8 **61-16.1-26. Reassessment of benefits.**

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

28 **SECTION 15. AMENDMENT.** Section 61-16.1-27 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-16.1-27. Correction of errors and mistakes in special assessments –Requirements-**
2 **governing.**

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

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

9 **61-16.1-28. Certification of assessments to county auditor.**

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

1 **SECTION 17. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-16.1-54. Appeal from decision of water resource board - Undertaking -**
4 **Jurisdiction.**

5 ~~An appeal may be taken to the district court from any~~An aggrieved person may appeal an
6 ~~order or decision of the~~a water resource board ~~by any person aggrieved~~to the district court of
7 the county in which the land claimed to be affected adversely by the order or decision is located.

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

17 **SECTION 18. AMENDMENT.** Section 61-21-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-21-01. Definitions.**

20 ~~In this chapter, unless the subject matter~~For purposes of this chapter, unless the context
21 otherwise requires:

- 22 1. "Affected landowners" means landowners whose land is subject to assessment or
23 condemnation.
- 24 2. "Board" means the board of managers of a water resource district.
- 25 3. "Cleaning out and repairing of drain" means deepening and widening of drains as well
26 as removing obstructions or sediment, and any repair necessary to return the drain to
27 a satisfactory and useful condition.
- 28 4. "Drain" means any natural watercourse opened, or proposed to be opened, and
29 improved for drainage and any artificial drains ~~of any nature or description~~channel
30 constructed for that purpose, ~~including dikes and appurtenant works. This~~
31 ~~definition~~drainage. The term includes dikes and appurtenant works and may include

1 more than one watercourse or artificial channel constructed for the aforementioned-
2 purpose when the watercourses or channels drain land within a practical drainage
3 area as determined by the written petition called for in section 61-21-10 and the survey
4 and examination called for in section 61-21-12 defined in section 61-16.1-02.

5 5. "Lateral drain" means a drain constructed after the establishment of the original drain
6 or drainage system and which flows into such the original drain or drainage system
7 from outside the limits of the original drain; provided, that a determination by the board
8 as to whether an existing or proposed drain is a lateral or a new drain within the
9 meaning of this subsection shall be conclusive when entered upon the records of such
10 board.

11 **SECTION 19.** Section 61-21-01.1 of the North Dakota Century Code is created and enacted
12 as follows:

13 **61-21-01.1. Designation of lateral drain.**

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

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

18 **61-21-02. Watercourses, ditches, and drains may be constructed, maintained,**
19 **repaired, improved, or extended.**

20 Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and
21 other lowlands may be surveyed and, investigated and, established, constructed, maintained,
22 repaired, improved, and cleaned out in the several counties of this state under the provisions of
23 this chapter wherever the same shall be 61-16.1 when doing so is conducive to the public
24 health, convenience, or welfare. ~~The powers conferred by this chapter and this section shall~~
25 ~~extend to and include~~ For this purpose, water resource boards may undertake:

- 26 1. The deepening and widening or any necessary improvement of drains which have
27 been or hereafter may be constructed.;
- 28 2. The straightening, clearing, or cleaning out and deepening of channels of creeks,
29 streams, and rivers, and the construction, maintenance, remodeling, repairing, and
30 extension of levees, dikes, and barriers for the purpose of drainage.;

- 1 3. The location or extension of any drain if ~~such location or extension is~~ necessary to
2 provide a suitable outlet or reasonably drain lands within a practical drainage area of
3 ~~such~~the drains-;
- 4 4. The establishment, in whole or in part, and construction of a drain ~~and the completion~~
5 ~~of the same~~ on the line of an abandoned or invalid drain-;
- 6 5. The establishment and construction of lateral drains with outlets in existing drains
7 ~~already constructed-;~~ and
- 8 6. The installation of artificial subsurface drainage systems.

9 **SECTION 21. AMENDMENT.** Section 61-21-24 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-21-24. Notice of letting of contracts.**

12 After the recording of percentage assessments as provided in section ~~61-21-23~~61-16.1-22,
13 the board shall ~~then~~ give at least ten days' notice of the time and place where contracts will be
14 let for the construction of the drain. ~~Such~~The notice shall ~~shall~~must be published at least once in a
15 newspaper having general circulation in the county.

16 **SECTION 22. AMENDMENT.** Section 61-21-34 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-21-34. Procedure to construct or extend aan assessment drain through or into**
19 **two or more counties.**

20 In order to construct or extend ~~aan assessment~~ drain through or into two or more counties
21 ~~in this state~~, a petition must be presented to the several water resource boards for the area in
22 which the drain will lie for the establishment of the drain ~~in their several counties as provided in~~
23 ~~this chapter~~under chapter 61-16.1. The boards ~~of the counties~~ shall hold a joint meeting and
24 shall determine the necessity or expediency of the establishment of the drain. ~~The several~~To
25 proceed with the drain, the boards ~~of all counties through or into which the proposed drain may~~
26 ~~run~~ shall agree upon the proportion of damages and benefits to accrue to the lands affected in
27 each county, and for this purpose the boards shall consider the entire course of the drain
28 through all the counties as one drain. Should the boards fail to agree upon the benefits to
29 accrue to the lands in each county, the boards shall submit the points in controversy to the
30 department of water resources, and the department's decision is final. The boards may
31 apportion the cost of establishing and constructing the entire drain ratably and equitably upon

1 the lands in each county in proportion to the benefits to accrue to the county's lands. When the
2 boards have apportioned the costs, the boards shall make written reports of the apportionment
3 to the auditors of the several counties affected. The reports must show the portion of cost of the
4 entire drain to be paid by taxes upon the lands in each of the counties and must be signed by
5 the boards of all counties affected. Upon the filing of the reports, the several boards shall meet
6 and assess against the lands in each of the counties, ratably and equitably as provided by ~~this~~
7 chapter 61-16.1, an amount sufficient to pay the proportion of the cost of the drain in each
8 county. The provisions of ~~this~~ chapter 61-16.1 relating to drains within a single county govern
9 the establishment, construction, maintenance, repair, and cleanout of the drains.

10 **SECTION 23. AMENDMENT.** Section 61-21-50 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-21-50. Drain warrants - Terms and amounts.**

13 Drain costs must be paid upon order of the board by warrants signed by the chairman and
14 one other member of the board. The warrants are payable from the proper drain fund and, upon
15 maturity, are receivable by the treasurer for drain assessments supporting the fund. The
16 warrants may be issued at any time after the order establishing the drain has become final and
17 after incurring liability to pay for drain work to be financed by drain assessments and in
18 anticipation of levy and collection of the assessments. Every warrant not made payable on
19 demand must specify the date when it becomes payable. Demand warrants not paid for want of
20 funds must be registered by the county treasurer or, if the water resource district treasurer is
21 custodian of the drain funds, the water resource district treasurer and bear interest at a rate
22 determined by the board, not exceeding eight percent per annum. Warrants of specified
23 maturities bear interest according to their provisions at a rate ~~or rates~~ resulting in an average
24 net interest cost not exceeding twelve percent per annum if sold at private sale, and may be
25 issued with interest coupons attached. There is no interest rate ceiling on warrants sold at
26 public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain
27 warrants must state upon their faces the purpose for which they are issued and the drain fund
28 from which they are payable. The warrants may be used to pay drain obligations, or may be
29 sold at not less than ninety-eight percent of par value, provided ~~that~~ the proceeds of warrants
30 sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid
31 warrants issued for the acquisition of right of way or the construction of a drain, including all

1 incidental costs in connection ~~therewith~~with the acquisition or construction, must be funded by a
2 bond issue within one hundred eighty days ~~from and~~ after the filing of the assessment of all
3 costs with the county auditor as provided in section ~~61-21-27~~61-16.1-28, but this requirement
4 may not be construed as prohibiting the funding of warrants or the issuance of bonds after the
5 one hundred eighty-day period.

6 **SECTION 24. AMENDMENT.** Section 61-21-56 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-21-56. Dissolution of drainage district - Return of unexpended assessments.**

9 The owners of property subject to fifty-one percent or more of the liability for maintaining
10 any drain as determined in section ~~61-21-16~~61-16.1-20 may petition the board for the
11 abandonment and dissolution of ~~such~~the drain. Upon receipt of ~~such~~the petition, the board shall
12 call a public hearing on the petition and if the board finds the number of valid signatures to
13 represent property liable to fifty-one percent or more of the cost of upkeep of ~~such~~the drain, as
14 determined by section ~~61-21-16~~61-16.1-20, and ~~that~~such~~the~~ drainage district has no
15 outstanding indebtedness, the board shall ~~then~~ declare ~~such~~the drain to be abandoned and
16 ~~such~~the drainage district to be dissolved, ~~shall~~ record ~~such~~the declaration ~~upon~~in the minutes
17 ~~and~~, publish the ~~samed~~declaration in a newspaper having wide circulation in that county, and
18 ~~shall~~ return all unexpended assessments collected for the maintenance of the drain to the
19 owners of the assessed property on a pro rata basis in proportion with the amount originally
20 assessed. ~~In case~~if the drainage district extends into two or more counties, the board upon
21 receipt of the petition ~~above referred to~~ shall convene in joint session and call the public
22 meeting above provided. When a drain has been abandoned and dissolved, ~~it~~the drain may
23 ~~then~~ be re-established in whole or in part only in the same way as a new drain is established.

24 **SECTION 25. AMENDMENT.** Section 61-21-65 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **61-21-65. Consolidation of drainage district or districts into water resource districts.**

27 Upon resolution of the board of county commissioners or the water resource board, or upon
28 the filing with the board of county commissioners of a petition containing the signatures of
29 landowners possessing at least fifteen percent of the voting rights in one or more drainage
30 districts, computed in accordance with section ~~61-21-16~~61-16.1-21, the board of county
31 commissioners shall set a date for hearing upon the establishment or expansion of a water

1 resource district to include the property contained within the drainage district or districts. The
2 board of county commissioners shall publish notice of the time, place, and purpose of the
3 hearing once each week for two consecutive weeks in a newspaper of general circulation in the
4 county, the second publication to be not less than ten nor more than twenty days before the
5 date set for hearing. In the event special assessments remain outstanding upon any property
6 within a drainage district to be affected by a hearing as provided in this section, the board of
7 county commissioners shall notify by ordinary mail at least ten days before the date set for the
8 hearing all landowners of record subject to the special assessments in accordance with the
9 provisions of section 61-21-66. If, at the time and place set for hearing, a majority of affected
10 landowners computed in accordance with section ~~61-21-16~~ 61-16.1-20 file written
11 objections, further proceedings ~~shall~~ must be discontinued. If ~~such~~ the majority does not object,
12 the board of county commissioners shall file with the state water commission a petition signed
13 by a majority of the board and all further proceedings ~~shall thereafter~~ must be governed by
14 chapters 61-16 and 61-16.1. Upon the establishment or expansion of a water resource district
15 to include one or more drainage districts, the board of county commissioners shall, by
16 resolution, shall dissolve the drainage districts and transfer all property of the dissolved districts
17 to the water resource district.

18 **SECTION 26. AMENDMENT.** Section 61-21-67 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

21 If the board determines that a drain, lateral drain, or ditch has been opened or established
22 by a landowner or tenant contrary to this chapter, chapter 61-16.1, or any rules adopted by the
23 board, the board shall notify the landowner by registered mail at the landowner's post office of
24 record. A copy of the notice ~~must~~ must be sent to the tenant, if any. The notice must specify
25 the nature and extent of the noncompliance and must state ~~that~~ if the drain, lateral drain, or
26 ditch is not closed or filled within the period the board determines, but not less than fifteen days,
27 the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the
28 cost of the closing or filling, or the portion the board determines, against the property of the
29 landowner responsible. The notice ~~must~~ must state ~~that~~ the affected landowner, within
30 fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter.
31 Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date

1 the demand is received. In the event of an emergency, the board may apply immediately ~~apply~~
2 to the appropriate district court for an injunction prohibiting the landowner or tenant from
3 maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be
4 collected in the same manner as other assessments authorized by ~~this~~ chapter 61-16.1. If, in
5 the opinion of the board, more than one landowner or tenant has been responsible, the costs
6 may be assessed on a pro rata basis in accordance with the proportionate responsibility of the
7 landowners. A landowner aggrieved by action of the board under this section may appeal the
8 decision of the board to the district court of the county in which the land is located in
9 accordance with the procedure provided for in section 28-34-01. A hearing as provided for in
10 this section is not a prerequisite to an appeal.

11 **SECTION 27. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the
12 North Dakota Century Code is amended and reenacted as follows:

13 g. If the subsurface water management system will discharge into the watershed
14 area of an assessment drain, inclusion of the relevant property into the
15 assessment district for the assessment drain in accordance with the benefits the
16 property receives, provided the property is not assessed already for the
17 assessment drain. The water resource district may include the new property into
18 the assessment district, and determine the benefits and assessment amounts
19 under ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment
20 of benefit proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided
21 the property is not assessed already for the assessment drain.

22 **SECTION 28. AMENDMENT.** Subsection 3 of section 61-32-03.2 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 3. If a subsurface water management system for which notification is required under
25 subsection 1 will discharge into the watershed area of an assessment drain, the water
26 resource board that receives the notice may require the relevant property to be
27 included in the assessment district for the assessment drain in accordance with the
28 benefits the property receives, provided the property is not assessed already for the
29 assessment drain. The water resource district also may include the property in the
30 assessment district and determine the benefits and assessment amounts under
31 ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment of benefit

1 proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided the property is
2 not assessed already for the assessment drain.

3 **SECTION 29. REPEAL.** Sections 61-16.1-01, 61-21-10, 61-21-11, 61-21-12, 61-21-13,
4 61-21-14, 61-21-15, 61-21-16, 61-21-17, 61-21-18, 61-21-20, 61-21-21, 61-21-22, 61-21-23,
5 61-21-25, 61-21-27, 61-21-29, 61-21-30, 61-21-31, 61-21-32, 61-21-32.1, 61-21-33, 61-21-36,
6 61-21-37, 61-21-38, 61-21-39, 61-21-40, 61-21-41, 61-21-42, 61-21-43, 61-21-43.1, 61-21-44,
7 61-21-45, 61-21-46, 61-21-47, 61-21-51, 61-21-52, 61-21-53, 61-21-55, 61-21-62, and 61-21-63
8 of the North Dakota Century Code are repealed.