

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

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sixty-fourth  
Legislative Assembly

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