



North Dakota Legislative Council

Prepared for the Water Drainage Committee

LC# 23.9247.01000

February 2022

IMPOSITION OF CULVERT AND BRIDGE COSTS ON POLITICAL SUBDIVISIONS

Under North Dakota Century Code Chapters 61-16.1 and 61-21, water resource boards may impose costs for certain drain-related projects on political subdivisions without consultation. Sections 61-16.1-42 and 61-21-31 contain nearly identical provisions governing the construction of culverts and bridges where drains run across public roads or highways. Upon notice from a water resource board that an opening is needed for a drain running across a highway, both sections require the Department of Transportation, board of county commissioners, or board of township supervisors with responsibility for the highway to provide for the construction and maintenance of a culvert or bridge. The Department of Transportation, board of county commissioners, or board of township supervisors also is required to pay for the construction and maintenance costs in accordance with Sections 61-16.1-43 and 61-21-32.

Sections 61-16.1-43 and 61-21-32 contain similar but conflicting provisions governing the allocation of costs for constructing and maintaining culverts and bridges necessitated by water resource districts' drains. Under Section 61-16.1-43, the allocation of costs to construct a culvert or bridge on a county or township highway system over and across or in connection with a drain is calculated by first deducting any cost-share provided by the State Water Commission and any federal financial participation from the total cost. Then, the county is responsible for 40 percent of the remaining costs, and the water resource district is responsible for the remaining 60 percent of costs. However, under Section 61-21-32, after any federal financial participation is deducted from the total costs:

- The State Water Commission may provide a cost-share only for the portion of total costs above \$500.
- If the State Water Commission provides a cost-share, 40 percent of the remaining costs is allocated to the county, and 60 percent is allocated to the water resource district.
- If the State Water Commission does not provide a cost-share and the cost exceeds \$100, 40 percent of the costs is allocated to the county, and 60 percent is allocated to the water resource district.

The committee may wish to review and reconcile Sections 61-16.1-42, 61-16.1-43, 61-21-31, and 61-21-32. To prevent additional conflicts, the two sections in Chapter 61-16.1 or the two sections in Chapter 61-21 should be repealed. The committee then may amend the sections in the other chapter to provide for the committee's preferred approval process, if any, and cost allocation formula.