

**HOUSE BILL NO. 1417**

Introduced by

Representatives Gorder, Herbel

Senator Tallackson

1 A BILL for an Act to amend and reenact sections 61-16.1-51, 61-16.1-53, 61-21-43.1, 61-21-67,  
2 and 61-32-07 of the North Dakota Century Code, relating to the time within which obstructions  
3 to drains, noncomplying dikes or dams, and noncomplying drains must be removed or closed.

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

5 **SECTION 1. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal -**

8 **Injunction - Definition.** If ~~the~~ a water resource board determines that an obstruction to a drain  
9 has been caused by the negligent act or omission of a landowner or tenant, the board shall  
10 notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of  
11 record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must  
12 specify the nature and extent of the obstruction, the opinion of the board as to its cause, and  
13 must state that if the obstruction is not removed within such period as the board ~~shall determine~~  
14 determines, but not less than ~~thirty~~ fifteen days, the board shall procure removal of the  
15 obstruction and assess the cost ~~thereof of the removal~~, or ~~such~~ the portion as the board ~~shall~~  
16 ~~determine~~ determines appropriate, against the property of the landowner responsible. The  
17 notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice  
18 is mailed, may demand, in writing, a hearing on the matter. Upon receipt of ~~such~~ the demand  
19 the board shall set a hearing date within fifteen days from the date the demand is received. In  
20 the event of an emergency the board may immediately apply to the appropriate district court for  
21 an injunction prohibiting a landowner or tenant from maintaining an obstruction. ~~Any~~  
22 ~~assessments~~ Assessments levied under the provisions of this section must be collected in the  
23 same manner as other assessments authorized by this chapter. If, in the opinion of the board,  
24 more than one landowner or tenant has been responsible, the costs may be assessed on a pro

1 rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A  
2 landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the  
3 decision of the board to the district court of the county in which the land is located in  
4 accordance with the procedure provided in section 28-34-01. A hearing as provided for in this  
5 section is not a prerequisite to ~~such~~ an appeal.

6 For the purposes of this section, "an obstruction to a drain" means ~~any~~ a barrier to a  
7 watercourse, as defined by section 61-01-06, or ~~any~~ an artificial drain, which materially affects  
8 the free flow of waters in ~~such~~ the watercourse or drain.

9 **SECTION 2. AMENDMENT.** Section 61-16.1-53 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal**  
12 **- Injunction.** Upon receipt of a complaint of unauthorized construction of a dike, dam, or other  
13 device for water conservation, flood control, regulation, watershed improvement, or storage of  
14 water, the water resource board shall promptly investigate and make a determination thereon.  
15 If the board determines that a dam or other device, capable of retaining, obstructing, or  
16 diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been  
17 established or constructed by a landowner or tenant contrary to ~~the provisions of~~ this title or any  
18 rules ~~promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or~~  
19 ~~certified~~ mail at the landowner's post-office address of record. A copy of the notice must also  
20 be sent to the tenant, if any. The notice must specify the nature and extent of the  
21 noncompliance and must state that if the dike, dam, or other device is not removed within ~~such~~  
22 the period as the board shall determine determines, but not less than ~~thirty~~ fifteen days, the  
23 board shall cause the removal of the dike, dam, or other device and assess the cost ~~thereof of~~  
24 the removal, or ~~such~~ the portion as the board shall determine determines, against the property  
25 of the landowner responsible. The notice must also state that the affected landowner ~~may~~,  
26 within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the  
27 matter. Upon receipt of ~~such~~ the demand, the board shall set a hearing date within fifteen days  
28 from the date the demand is received. In the event of an emergency, the board may  
29 immediately apply to the appropriate district court for an injunction prohibiting the landowner or  
30 tenant from constructing or maintaining the dike, dam, or other device, or ordering the  
31 landowner to remove the dike, dam, or other device. ~~Any assessments~~ Assessments levied

1 under ~~the provisions of~~ this section must be collected in the same manner as other  
2 assessments authorized by this chapter. If, in the opinion of the board, more than one  
3 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in  
4 proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the  
5 board under ~~the provisions of~~ this section may appeal the decision of the board to the district  
6 court of the county in which the land is located in accordance with the procedure provided in  
7 section 28-34-01. A hearing as provided for in this section is not prerequisite to ~~such~~ an  
8 appeal.

9 **SECTION 3. AMENDMENT.** Section 61-21-43.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal -**

12 **Injunction.** If the board determines that an obstruction to a drain has been caused by the  
13 negligent act or omission of a landowner or landowner's tenant, the board shall notify the  
14 landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the  
15 notice must also be sent to the tenant, if any. The notice must specify the nature and extent of  
16 the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is  
17 not removed within ~~such~~ the period as the board determines, but not less than ~~thirty~~ fifteen  
18 days, the board shall procure removal of the obstruction and assess the cost ~~thereof~~ of the  
19 removal, or ~~such~~ the portion as the board determines, against the property of the landowner  
20 responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of  
21 the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt  
22 of the demand the board shall set a hearing date within fifteen days from the date the demand  
23 is received. In the event of an emergency the board may, immediately upon learning of the  
24 existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting  
25 ~~such a~~ the landowner or landowner's tenant to maintain ~~such an~~ the obstruction. ~~Any~~  
26 ~~assessments~~ Assessments levied under this section must be collected in the same manner as  
27 other assessments authorized by this chapter. If, in the opinion of the board, more than one  
28 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in  
29 accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner  
30 aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of  
31 the board to the district court of the county in which the land is located in accordance with the

1 procedure provided for in section 28-34-01. A hearing as provided for in this section is not a  
2 prerequisite to ~~such~~ an appeal.

3 **SECTION 4. AMENDMENT.** Section 61-21-67 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal -**  
6 **Injunction.** If the board determines that a drain, lateral drain, or ditch has been opened or  
7 established by a landowner or tenant contrary to ~~the provisions of~~ this chapter or any rules  
8 adopted by the board, the board shall notify the landowner by registered mail at the landowner's  
9 post office of record. A copy of the notice must also be sent to the tenant, if any. The notice  
10 must specify the nature and extent of the noncompliance and must state that if the drain, lateral  
11 drain, or ditch is not closed or filled within ~~such~~ the period ~~as~~ the board determines, but not less  
12 than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or  
13 ditch and assess the cost ~~thereof of the closing or filling, of such or the portion as~~ the board  
14 determines, against the property of the landowner responsible. The notice must also state that  
15 the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in  
16 writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing  
17 date within fifteen days from the date the demand is received. In the event of an emergency,  
18 the board may immediately apply to the appropriate district court for an injunction prohibiting the  
19 landowner or tenant from maintaining the drain, lateral drain, or ditch. ~~Any assessments~~  
20 Assessments levied under this section must be collected in the same manner as other  
21 assessments authorized by this chapter. If, in the opinion of the board, more than one  
22 landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in  
23 accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner  
24 aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of  
25 the board to the district court of the county in which the land is located in accordance with the  
26 procedure provided for in section 28-34-01. A hearing as provided for in this section is not a  
27 prerequisite to ~~such~~ an appeal.

28 **SECTION 5. AMENDMENT.** Section 61-32-07 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30 **61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction**  
31 **- Frivolous complaints.** Only a landowner experiencing flooding or adverse effects from an

1 unauthorized drain constructed before January 1, 1975, may file a complaint with the water  
2 resource board. Any person may file a complaint about an unauthorized drain constructed after  
3 January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource  
4 board shall promptly investigate and make a determination of the facts with respect to the  
5 complaint. If the board determines that a drain, lateral drain, or ditch has been opened or  
6 established by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules adopted  
7 by the board, the board shall notify the landowner by registered mail at the landowner's  
8 post-office address of record. A copy of the notice must also be sent to the tenant, if known.  
9 The notice must specify the nature and extent of the noncompliance and must state that if the  
10 drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board  
11 determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of  
12 the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, or ~~such the~~  
13 portion ~~as~~ the board determines, against the property of the landowner responsible. The notice  
14 must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is  
15 mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the  
16 board shall set a hearing date within fifteen days from the date the demand is received. In the  
17 event of an emergency, the board may immediately apply to the appropriate district court for an  
18 injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral  
19 drain, or ditch and ordering the closure of the illegal drain. ~~Any assessments~~ Assessments  
20 levied under this section must be collected in the same manner as assessments authorized by  
21 chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been  
22 responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of  
23 the landowners. ~~Any~~ A person aggrieved by action of the board under this section may appeal  
24 the decision of the board to the district court of the county in which the land is located in  
25 accordance with the procedure provided in section 28-34-01. A hearing as provided for in this  
26 section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the  
27 board, the complaint is frivolous, the board may assess the costs of the frivolous complaint  
28 against the complainant.