

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1417
(Representatives Gorder, Herbel)
(Senator Tallackson)

AN ACT to amend and reenact sections 61-16.1-51, 61-16.1-53, 61-21-43.1, 61-21-67, and 61-32-07 of the North Dakota Century Code, relating to the time within which obstructions to drains, noncomplying dikes or dams, and noncomplying drains must be removed or closed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If ~~the~~ a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board ~~shall determine~~ determines, but not less than ~~thirty~~ fifteen days, the board shall procure removal of the obstruction and assess the cost ~~thereof of the removal~~, or ~~such~~ the portion ~~as~~ the board ~~shall determine~~ determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of ~~such~~ the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. ~~Any assessments~~ Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

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

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

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules ~~promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within ~~such~~ the period as the board ~~shall determine~~ determines, but not less than ~~thirty~~ fifteen days, the

board shall cause the removal of the dike, dam, or other device and assess the cost ~~thereof of the removal~~, or ~~such the~~ portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, ~~may~~ demand, in writing, a hearing upon the matter. Upon receipt of ~~such the~~ demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. ~~Any assessments~~ Assessments levied under ~~the provisions of~~ this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to ~~such~~ an appeal.

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

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

If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within ~~such the~~ period as the board determines, but not less than ~~thirty fifteen~~ days, the board shall procure removal of the obstruction and assess the cost ~~thereof of the removal~~, or ~~such the~~ portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, ~~may~~ demand in writing a hearing upon the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting ~~such a the~~ landowner or landowner's tenant to maintain ~~such an the~~ obstruction. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

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

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within ~~such the~~ period as the board determines, but not less than ~~thirty fifteen~~ days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof of the closing or filling~~, of ~~such or the~~ portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, ~~may~~ demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments

authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

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

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, or ~~such the~~ portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1417.

House Vote: Yeas 83 Nays 13 Absent 2

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State