

HOUSE BILL NO. 1139

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new section to chapter 61-16.1 of the North Dakota
2 Century Code, relating to appeals of water resource board decisions of noncomplying dams,
3 dikes, or other devices to the state engineer.

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

5 **SECTION 1.** A new section to chapter 61-16.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Appeal of board decisions - State engineer review - Closing of noncomplying**
8 **dams, dikes, or other devices for water conservation, flood control, regulation, and**
9 **watershed improvement.** The board shall make the decision required by section 61-16.1-53
10 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint.
11 The board shall notify all parties of its decision by registered mail. The board's decision may be
12 appealed to the state engineer by any aggrieved party. The appeal to the state engineer must
13 be made within thirty days from the date notice of the board's decision has been received. The
14 appeal must be made by submitting a written notice to the state engineer which must
15 specifically set forth the reason why the appealing party believes the board's decision is
16 erroneous. The appealing party shall also submit copies of the written appeal notice to the
17 board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered
18 removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the
19 dam, dike, or other device. The state engineer shall handle the appeal by conducting an
20 independent investigation and making an independent determination of the matter. The state
21 engineer may enter property affected by the complaint for the purpose of investigating the
22 complaint.

23 If the board fails to investigate and make a determination concerning the complaint
24 within a reasonable time, not exceeding one hundred twenty days, the person filing the

1 complaint may file the complaint with the state engineer. The state engineer, without reference
2 to chapter 28-32, shall cause the investigation and determination to be made, either by action
3 against the board, or by personally conducting the investigation and personally making the
4 determination. If the state engineer determines that a dam, dike, or other device has been
5 constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by
6 the board, the state engineer shall take one of these three actions:

- 7 1. Notify the landowner by registered mail at the landowner's post-office address of
8 record;
- 9 2. Return the matter to the jurisdiction of the board along with the investigation report;
10 or
- 11 3. Forward the dam, dike, or other device complaint and investigation report to the
12 state's attorney.

13 If the state engineer decides to notify the landowner, the notice must specify the nature
14 and extent of the noncompliance and must state that if the dam, dike, or other device is not
15 removed within such reasonable time as the state engineer determines, but not less than thirty
16 days, the state engineer shall procure the removal of the dam, dike, or other device and assess
17 the cost of removal against the property of the responsible landowner. The notice from the
18 state engineer must state that, within fifteen days of the date the notice is mailed, the affected
19 landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the
20 state engineer shall set a hearing date within fifteen days from the date the demand is received.
21 If, in the opinion of the state engineer, 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. Upon assessment of costs, the state engineer shall certify the assessment to
24 the county auditor of the county where the noncomplying dam, dike, or other device is located.
25 The county auditor shall extend the assessment against the property assessed. Each
26 assessment must be collected and paid as other property taxes are collected and paid.
27 Assessments collected must be deposited with the state treasurer and are hereby appropriated
28 out of the state treasury and must be credited to the contract fund established by section
29 61-02-64.1. Any person aggrieved by action of the state engineer under this section may
30 appeal the decision of the state engineer to the district court in accordance with chapter 28-32.

1 A hearing by the state engineer as provided for in this section is a prerequisite to such an
2 appeal.

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

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

13 In addition to the penalty imposed by the court in the event of conviction under this
14 statute, the court shall order the dam, dike, or other device removed within such reasonable
15 time period as the court determines, but not less than thirty days. If the dam, dike, or other
16 device is not removed within the time prescribed by the court, the court shall procure the
17 removal of the dam, dike, or other device, and assess the cost thereof against the property of
18 the landowner responsible, in the same manner as other assessments under chapter 61-16.1
19 are levied. If, in the opinion of the court, more than one landowner or tenant has been
20 responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of
21 the landowners.

22 The authority granted in this section may only be exercised for dams, dikes, or other
23 devices constructed after the effective date of this Act.