

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 61-16.1 and two new sections to
2 chapter 61-21 of the North Dakota Century Code, relating to cost-benefit analyses for
3 assessment projects and determinations regarding lateral drains; to amend and reenact
4 sections 61-16.1-02, 61-16.1-09.1, 61-16.1-12.1, 61-16.1-15, 61-16.1-17, 61-16.1-18,
5 61-16.1-19, 61-16.1-20, 61-16.1-22, 61-16.1-23, 61-21-01, 61-21-13, 61-21-14, 61-21-16,
6 61-21-20, 61-21-21, 61-21-22, and 61-21-23 of the North Dakota Century Code, relating to
7 costs, benefits, and special assessments for water projects; and to repeal sections 61-16.1-01
8 and 61-16.1-21 of the North Dakota Century Code, relating to legislative intent and assessing
9 property for water projects.

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

11 **SECTION 1. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-16.1-02. Definitions.**

14 In this chapter, unless the context or subject matter otherwise provides:

- 15 1. "Affected land" or "affected property" means land or property subject to special
16 assessment or condemnation for a project.
- 17 2. "Affected landowners" means landowners whose land is subject to special
18 assessment or condemnation for a project.
- 19 ~~2.3.~~ "Assessment drain" means any natural watercourse opened, or proposed to be
20 opened, and improved for the purpose of drainage, and any artificial drain of any
21 nature or description constructed for the purpose of drainage, including dikes and
22 appurtenant works, which are financed in whole or in part by special assessment. This
23 definition may include more than one watercourse or artificial channel constructed for

1 the purpose of drainage when the watercourses or channels drain land within a
2 practical drainage area.

3 ~~3-4.~~ "Assessment project" means any project financed in whole or in part by a special
4 assessment.

5 5. "Benefited property" means property that accrues benefits from a project.

6 6. "Benefits" means the extent to which society and economies impacted by a project are
7 made better off through lower costs, fewer damages, or enhancements.

8 7. "Commission" means the state water commission.

9 ~~4-8.~~ "Conservation" means planned management of water resources to prevent
10 exploitation, destruction, neglect, or waste.

11 ~~5-9.~~ "Costs of the frivolous complaint" means all reasonable costs associated with the
12 requisite proceedings regarding the removal of obstructions to a drain, removal of a
13 noncomplying dike or dam, or closing a noncomplying drain, including all reasonable
14 construction costs; all reasonable attorney's fees and legal expenses; all reasonable
15 engineering fees, including investigation and determination costs; compliance
16 inspections; ~~and~~ necessary technical memorandum and deficiency review; and all
17 costs associated with any hearing conducted by a district, including preparation and
18 issuance of any findings of fact and any final closure order.

19 ~~6-10.~~ "District" means a water resource district.

20 ~~7-11.~~ "Frivolous" means allegations and denials in any complaint filed with a district made
21 without reasonable cause and not in good faith.

22 ~~8-12.~~ "Project" means any undertaking for water conservation, flood control, water supply,
23 water delivery, erosion control and watershed improvement, drainage of surface
24 waters, collection, processing, and treatment of sewage, or discharge of sewage
25 effluent, or any combination thereof, including of these undertakings and includes
26 incidental features of any such undertaking.

27 ~~9-13.~~ "Water resource board" means the water resource district's board of managers.

28 **SECTION 2. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

- 2 1. A water resource board may undertake the snagging, clearing, and maintaining of
3 natural watercourses and the debris removal of bridges and low-water crossings. The
4 board may finance the project in whole or in part with funds raised through the
5 collection of a special assessment levied against the land and premises benefited by
6 the project. The benefits of a project must be determined in the manner provided in
7 section ~~61-16.1-176~~ of this Act. Revenue from an assessment under this section may
8 not be used for construction of a drain or reconstruction or maintenance of an existing
9 assessment drain. Any question as to whether the board is maintaining a natural
10 watercourse or is constructing a drain or reconstructing or maintaining an existing
11 assessment drain must be resolved by the department of water resources. All
12 provisions of this chapter apply to assessments levied under this section except:
- 13 a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on
14 agricultural lands and may not exceed fifty cents annually for each five hundred
15 dollars of taxable valuation of nonagricultural property; and
- 16 b. If the assessment is for a project costing less than one hundred thousand dollars,
17 no action is required for the establishment of the assessment district or the
18 assessments except the board must approve the project and assessment by a
19 vote of two-thirds of the members and the board of county commissioners of the
20 county in which the project is located must approve and levy the assessments to
21 be made by a vote of two-thirds of its members.
- 22 (1) If a board that undertakes a project finds the project will benefit lands
23 outside water resource district boundaries, the board shall provide notice to
24 the water resource board where the benefited lands are located together
25 with the report prepared under section 61-16.1-17.
- 26 (2) The board of each water resource district containing lands benefited by a
27 project must approve the project and assessment by a vote of two-thirds of
28 its members. The board of county commissioners in each county that
29 contains lands benefited by a project must approve and levy the
30 assessment to be made by a vote of two-thirds of its members.

1 (3) If a project and assessment is not approved by all affected water resource
2 boards and county commission boards, the board of each water resource
3 district and the board of county commissioners of each county shall meet to
4 ensure all common water management problems are resolved pursuant to
5 section 61-16.1-10. In addition, the water resource board that undertakes
6 the project may proceed with the project if the board finances the cost of the
7 project and does not assess land outside the boundaries of the district.

8 c. All revenue from an assessment under this section must be exhausted before a
9 subsequent assessment covering any portion of lands subject to a prior
10 assessment may be levied.

11 2. Before an assessment may be levied under this section, a public hearing must be held
12 and attended by a quorum of the affected water resource boards and a quorum of the
13 affected boards of county commissioners. The hearing must be preceded by notice as
14 to date, time, location, and subject matter published in the official newspaper in the
15 county or counties in which the proposed assessment is to be levied. The notice must
16 be published at least ten days but not more than thirty days before the public hearing.

17 **SECTION 3. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for**
20 **certain improvements.**

21 1. A water resource board may enter into an agreement with any federal or state agency,
22 or any combination thereof of federal or state agencies, for the construction of a
23 project, under the terms of which the contract for the work is to be let by the federal or
24 state agency or any combination thereof of federal or state agencies. If under the terms
25 of the agreement at least fifty percent of the total cost of constructing the project is to
26 be paid by the agency or agencies and if any portion of the cost of the project is to be
27 paid by the levy of special assessments, the board may by resolution may create a
28 project assessment district for the purpose of levying to levy special assessments to
29 finance the amount that the district will be obligated to pay in accordance with the
30 agreement, over and above any other funds which are on hand and properly available
31 for that purpose. The assessment district must be of a size and form as to include all

1 ~~properties which in the judgment of~~ benefited property as determined by the board,
2 after consultation with a registered engineer designated by the board for that purpose,
3 ~~will be benefited by the construction of the proposed project,~~ and the board shall direct
4 the engineer to prepare a map showing the boundaries of the proposed assessment
5 district.

6 2. The board by resolution shall ~~by resolution~~ declare the necessity of the project, set
7 forth the general nature and purpose of the proposed project, estimate the total cost of
8 the project; and the approximate amount or fraction of the cost ~~which~~ the district will be
9 obligated to pay under the agreement, and the fact ~~that~~ this amount, or a lesser
10 amount as the board may specify, is proposed to be paid by the levy of special
11 assessments upon benefited property within the assessment district ~~determined to be~~
12 ~~benefited by the project.~~ The board shall ~~cause~~ email the resolution of necessity
13 ~~together with,~~ a copy of the map showing the boundaries of the assessment district,
14 and a notice stating the date and time by which the owners of any property liable to be
15 specially assessed for the proposed project must ~~file their~~ cast votes on the proposed
16 project with the secretary of the board ~~to be mailed~~ to each affected landowner
17 ~~affected by the proposed project~~ as determined by the tax rolls of the county in which
18 the affected property is located. The board may send the material by certified mail or
19 by regular mail attested by an affidavit of mailing signed by the attorney or secretary of
20 the board. The notice must ~~also~~ set forth the time and place ~~where~~ the board shall
21 meet to determine whether the project is approved. The notice must ~~also~~ be published
22 once in a newspaper of general circulation in the district and once in the official county
23 newspaper of each county in which the ~~benefited lands are~~ affected property is located.
24 Within five days after the first mailing of the resolution the board shall ~~cause~~ serve a
25 copy of the resolution ~~to be personally served~~ upon any county, city, or township, in its
26 corporate capacity which may be benefited directly or indirectly from the construction
27 of the proposed project and upon any county ~~which~~ that may become liable for any
28 deficiency in the fund to be created for the project, by delivering a copy of the
29 resolution to any member of the governing body ~~thereof~~ of the county, city, or township.

30 3. The meeting must be held not less than thirty days after the mailing of the resolution,
31 at which time the board shall determine whether the project is approved. If the board

1 finds that fifty percent or more of the total votes filed are against a proposed project,
2 then the board may not proceed further with the proposed project. If the board finds
3 that less than fifty percent of votes filed are against the proposed project, the board
4 may proceed with the project. In any assessment district created under this section,
5 the board may dispense with all ~~other~~ the requirements of this chapter, other than
6 those stated in this section.

7 4. After the contract for the work has been let, the board may issue warrants on the fund
8 of the project for the total amount of the cost ~~thereof~~ of the project, and the board,
9 without holding the hearing required by section 61-16.1-18, shall ~~proceed to~~ determine
10 and levy any assessments against benefited property ~~benefited by the project~~ and
11 prepare an assessment list ~~all~~ in accordance with the procedures required by section 6
12 of this Act and sections ~~61-16.1-21~~ 61-16.1-22 through 61-16.1-24. The provisions of
13 sections 61-16.1-25 through 61-16.1-36 are applicable to the assessments and the
14 special warrants issued pursuant to this section.

15 **SECTION 4. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **~~61-16.1-15. Financing project through revenue bonds, general taxes, or special-~~**
18 **~~assessments – Apportionment of benefits~~ Initiating an assessment project - Policy.**

19 A water resource board ~~shall have the authority~~, either upon request or by its own motion,
20 ~~to~~ may acquire needed interest in property and provide for the cost of construction, alteration,
21 repair, operation, and maintenance of a project through issuance of improvement warrants or
22 with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a
23 combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a~~
24 ~~water resource board decides to acquire property or interests in property to construct, operate,~~
25 ~~alter, repair, or maintain a project with funds raised in whole or in part through special~~
26 ~~assessments, such assessments shall be apportioned to and spread upon lands or premises~~
27 ~~benefited by the project in proportion to and in accordance with benefits accruing thereto. The~~
28 ~~board shall assess the proportion of the cost of the project, or the part of the cost to be financed~~
29 ~~with funds raised through levy and collection of special assessments which any lot, piece, or~~
30 ~~parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or~~
31 ~~township which is benefited thereby.~~ In determining the amounts of assessments under this

1 chapter, the water resource board shall carry out to the maximum extent possible the water
2 management policy of this chapter that upstream landowners must share with downstream
3 landowners the responsibility to provide for the proper management of surface waters.

4 **SECTION 5. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.1-17. Financing of special improvements - Procedure.**

7 ~~When it is proposed to finance in whole or in part the construction of a project with funds~~
8 ~~raised through the collection of special assessments levied against lands and premises~~
9 ~~benefited by construction and maintenance of such project~~ an assessment project is proposed,
10 the water resource board shall examine the proposed project, and if ~~in its opinion~~ the board
11 decides further proceedings are warranted, ~~it~~ the board shall adopt a resolution and declare that
12 ~~it is necessary to construct and maintain~~ construction and maintenance of the project is
13 necessary. The resolution shall briefly must state the nature and purpose of the proposed
14 project and shall designate a registered engineer to assist the board. For the purpose of making
15 examinations or surveys, the board or ~~its employees~~ the board's agents, after written notice to
16 each landowner, may enter upon any land on which the proposed project is located or any other
17 lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications of
18 the proposed project and estimates of the proposed project's total cost ~~thereof~~. The estimate of
19 costs prepared by the engineer ~~shall include acquisition of~~ must include the cost to acquire right
20 of way and shall be ~~in sufficient detail to allow~~ sufficiently detailed for the board to determine the
21 probable share of the total costs ~~that will~~ to be assessed against each of the affected
22 landowners in the proposed project assessment district under section 6 of this Act.

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

25 **Cost-benefit analyses for assessment projects - Limitations on assessments.**

26 1. A water resource board shall prepare a cost-benefit analysis of a proposed
27 assessment project before the board may hold a hearing on the project under section
28 61-16.1-18. The cost-benefit analysis must include calculations, in dollars, of the total
29 benefits anticipated from the project and the total costs anticipated for the project. If
30 the calculated dollar amount of benefits does not exceed the calculated dollar amount
31 of costs, the board may not levy special assessments for the project.

- 1 2. The board or the board's agents shall inspect all lots, pieces, and parcels of land
2 which may be subject to assessment for a proposed project to gather information for
3 the cost-benefit analysis. When calculating benefits the board shall consider, among
4 other factors, property values, degree of improvement of properties, productivity, and
5 the water management policy as expressed in section 61-16.1-15. The anticipated
6 costs must include all costs to be paid from assessments, including construction and
7 maintenance costs, costs to acquire necessary property for the project, and other
8 costs identified in section 61-16.1-24.
- 9 3. Although the costs of a project must be assessed against property in proportion to
10 benefits received from the project, a water resource board may not assess any lot,
11 piece, or parcel of land or any county, city, or township an amount exceeding the dollar
12 amount of benefits anticipated to accrue to the lot, piece, parcel, county, city, or
13 township from a project. A cost-benefit analysis prepared for a proposed project must
14 include sufficient detail for the board to comply with this subsection.
- 15 4. Property belonging to the United States is exempt from assessment for projects unless
16 the United States has provided for the payment of any assessment that may be levied
17 against the property for benefits received. Benefited property belonging to counties,
18 cities, school districts, park districts, and townships is not exempt from assessment,
19 and political subdivisions whose property is assessed shall provide for the payment of
20 the assessments, installments, and interest by the levy of taxes according to law. Any
21 county, township, or city assessed in its corporate capacity for benefits received shall
22 provide for the payment of the assessments, installments, and interest from the
23 political subdivision's general fund or by levy of a general property tax against all the
24 taxable property in the political subdivision in accordance with law. A tax limitation
25 provided by any statute of this state does not apply to tax levies made by a political
26 subdivision for the purpose of paying any special assessments made in accordance
27 with this chapter.

28 **SECTION 7. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **61-16.1-18. Hearing - Notice - Contents - Results of cost-benefit analysis.**

2 Upon the filing of the engineer's report provided for in section 61-16.1-17, and after
3 satisfying the requirements of section ~~61-16.1-216~~ of this Act, the water resource board shall fix
4 a date and place for a public hearing on the proposed project. The place of hearing must be in
5 the vicinity of the proposed project and must be convenient and accessible for the majority of
6 ~~the affected~~ landowners subject to assessment for the project or whose property is subject to
7 ~~condemnation for the proposed project~~. ~~The board shall cause a complete list of the benefits~~
8 ~~and assessments to be made, setting forth each county, township, or city assessed in its~~
9 ~~corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is~~
10 ~~benefited by the improvement and the amount assessed against each~~. At least ten days before
11 the hearing, the board shall file with the county auditor of each county ~~or counties~~ in which the
12 project is or will be located the list results, in dollars, of the cost-benefit analysis for the project
13 showing the percentage assessment against each parcel of land benefited by the proposed
14 project and the approximate assessment in terms of money apportioned thereto project's total
15 anticipated benefits and costs and the anticipated benefits and assessments for each affected
16 lot, piece, or parcel of land and each affected county, city, or township. A certificate signed by a
17 majority of the members of the board attesting the cost-benefit analysis includes a true and
18 correct assessment of the anticipated benefits of the proposed project described to the best of
19 the members' judgment and identifying the several costs included in the analysis must be
20 attached to the results. Notice of the filing of the cost-benefit analysis results must be included
21 in the notice of the hearing. ~~Notices~~ The notice of the hearing must contain a copy of the
22 resolution of the board to proceed with the project as well as the time and place ~~where the~~
23 ~~board will conduct~~ of the hearing. The notice of the hearing must specify the general nature of
24 the project as finally determined by the engineer and the board. ~~The notice of hearing must also~~
25 and specify when and where votes concerning the proposed project may be filed. The
26 ~~assessment list showing the percentage assessment against each parcel of land benefited by~~
27 ~~the proposed project and the approximate assessment in terms of money apportioned thereto,~~
28 along with results of the cost-benefit analysis and a copy of the notice of the hearing, must be
29 mailed to each affected landowner at the landowner's address as shown by the tax rolls of the
30 county ~~or counties~~ in which the affected property is located. The board may send the
31 assessment list results of the cost-benefit analysis and notice by regular mail attested by an

1 affidavit of mailing signed by the attorney or secretary of the board. The board shall ~~cause the~~
2 ~~notice of hearing to be published~~publish the notice of the hearing once a week for two
3 consecutive weeks in the newspaper ~~or newspapers~~ of general circulation in the area in which
4 the affected landowners reside and in the official county newspaper of each county in which the
5 ~~benefited~~affected lands are located. The date set for the hearing must not be less than twenty
6 days after the mailing of the notice. A record of the hearing must be made by the board,
7 ~~including~~include a list of affected landowners present in person or by agent, and ~~the record~~
8 ~~must~~ be preserved in the minutes of the meeting. Affected landowners, and the governing body
9 of any county, township, or city to be assessed, must be informed at the hearing of the ~~probable~~
10 ~~total cost of the project and their individual share of the cost and the portion of their property, if~~
11 ~~any, to be condemned for the project~~results of the cost-benefit analysis.

12 **SECTION 8. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-16.1-19. Voting on proposed projects.**

15 At the hearing under section 61-16.1-18, the affected landowners, and any county,
16 township, or city to be assessed, must ~~also~~ be informed when and where votes concerning the
17 proposed project may be filed. Affected landowners, and the governing body of any county,
18 township, or city to be assessed, have thirty days after the date of the hearing to file ~~their~~the
19 votes with the secretary of the water resource board ~~concerning the project~~. Once the deadline
20 for filing votes has been reached, ~~no more~~ votes may not be filed ~~and no person may withdraw~~
21 ~~a vote or withdrawn~~. Any withdrawal of a vote concerning the proposed project before that time
22 must be in writing. When the votes have been filed and the deadline for filing votes has passed,
23 the board immediately shall ~~immediately~~ determine whether the project is approved. If the board
24 finds ~~that~~ fifty percent or more of the total votes filed are against the proposed project, ~~then~~ the
25 vote constitutes a bar against proceeding further with the project. If the board finds ~~that~~ the
26 number of votes filed against the proposed project is less than fifty percent of the votes filed, the
27 board shall issue an order establishing the proposed project and ~~may proceed~~, after complying
28 with the requirements of ~~sections 61-16.1-21~~section 6 of this Act and section 61-16.1-22, ~~to~~may
29 contract or provide for the construction or maintenance of the project in substantially the
30 manner and according to the forms and procedure provided in title 40 for the construction of
31 sewers within municipalities. The board may enter ~~into~~ an agreement with any federal or state

1 agency under the terms of which the contract for the project is to be let by the federal agency,
2 the state agency, or a combination thereof of federal and state agencies. In projects in which if
3 there is an agreement ~~that~~for a party other than the board ~~will~~to let the contract, the board may
4 dispense with all of the requirements of title 40. Upon making an order establishing or denying
5 establishment of a project, the board shall publish notice of the order in a newspaper of general
6 circulation in the area in which the affected landowners reside and in the official county
7 newspaper of each county in which the ~~benefited~~affected lands are located. Any right of appeal
8 begins to run on the date of publication of the notice. ~~As used in this section, "board" means-~~
9 ~~water resource board.~~

10 **SECTION 9. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **61-16.1-20. Voting right ~~or powers~~ of landowners.**

13 In order that there may be a fair relation between the amount of liability for assessments
14 and the power of objecting to the establishment of a proposed project, the voting rights of
15 affected landowners on the question of establishing the project are as provided in this section.
16 ~~The landowner or landowners of tracts of land affected by the project~~Affected landowners have
17 one vote for each dollar of assessment ~~that~~to which the land is subject ~~to~~ or one vote for each
18 dollar of the assessed valuation of land condemned for the project, as determined in
19 accordance with title 57. The governing body of any county, township, or city to be assessed
20 ~~also~~ has one vote for each dollar of assessment against ~~such~~the county, township, or city. There
21 may be only one vote for each dollar of assessment, regardless of the number of owners of
22 ~~such~~the tract of land. ~~Where~~if more than one owner of ~~such~~the land exists, the votes must be
23 prorated among ~~them~~the owners in accordance with each owner's property interest. A written
24 power of attorney authorizes an agent to protest a project on behalf of ~~any~~the affected
25 landowner ~~or landowners~~that executed the power of attorney.

26 **SECTION 10. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is
27 amended and reenacted as follows:

1 **61-16.1-22. Assessment list**~~Cost-benefit analysis results to be published - Notice of~~
2 **hearing on assessments - Alteration of assessments - Confirmation of assessment list -**
3 **Filing.**

4 After entering an order establishing ~~the an assessment~~ project, the water resource board
5 shall ~~cause the assessment list to be published~~ publish a notice including the results, in dollars,
6 of the cost-benefit analysis for the project showing the project's total anticipated benefits and
7 costs and the anticipated benefits and assessments for each affected lot, piece, or parcel of
8 land and each affected county, city, or township once each week for three successive weeks in
9 the newspaper ~~or newspapers~~ of general circulation in the district and in the official county
10 newspaper of each county in which the ~~benefited~~ affected lands are located ~~together with a~~
11 ~~notice of.~~ The published notice also must specify the time when, and place where, the board will
12 meet to hear objections to any assessment by any interested party, or an agent or attorney for
13 that party. The board also shall mail a copy of the published notice ~~of the hearing~~ in an envelope
14 clearly marked "ASSESSMENT NOTICE" to each affected landowner at the landowner's
15 address as shown by the tax rolls of the county ~~or counties~~ in which the affected property is
16 located. The date set for the hearing may not be less than thirty days after the mailing of the
17 notice. At the hearing, the board may make ~~such~~ alterations in the assessments as ~~in its opinion~~
18 ~~may be~~ the board determines are just and necessary to correct any error ~~in the assessment but~~
19 ~~must make the aggregate of all assessments equal to the total amount required to pay the~~
20 ~~entire cost of the work for which the assessments are made, or the part of the cost to be paid by~~
21 ~~special assessment.~~ An assessment may not exceed the benefit as determined by the board to
22 the parcel of land or political subdivision assessed. The board shall ~~then~~ confirm ~~the an~~
23 assessment list and that the hearing. The secretary shall attach to the list a certificate ~~that the~~
24 ~~same~~ stating the list is correct as confirmed by the board and shall file the list in the office of the
25 secretary.

26 **SECTION 11. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.1-23. Appeal to department of water resources.**

29 After the hearing provided for in section 61-16.1-22, affected landowners and any political
30 subdivision subject to assessment, having not less than twenty percent of the possible votes as
31 determined by section 61-16.1-20, ~~whewhich~~ believe the assessment was not made fairly or

1 equitably or the project is not located or designed properly, may appeal to the department of
2 water resources by petition, within ten days after the hearing on assessments, to make a review
3 of the assessments and to examine the location and design of the proposed project. Upon
4 receipt of the petition the department shall examine the lands assessed and the location and
5 design of the proposed project, and if it appears the assessments were not made equitably, the
6 department may correct the assessments, subject to section 6 of this Act, and the department's
7 correction and adjustment of the assessment is final. If the department believes the project was
8 located or designed improperly, the department may order a relocation and redesign that must
9 be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty
10 dollars with the board for the payment of the costs of the department in the matter, any
11 landowner or political subdivision claiming the landowner or political subdivision will receive no
12 benefit from the construction of a new project may appeal that issue to the department within
13 ten days after the hearing on assessments. Upon an appeal by an individual landowner or
14 political subdivision, the department may determine whether there is any benefit to the
15 landowner or political subdivision, but not the specific amount of benefit. The determination of
16 the department regarding whether there is a benefit is final.

17 **SECTION 12. AMENDMENT.** Section 61-21-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **61-21-01. Definitions.**

20 In this chapter, unless the subject matter otherwise requires:

- 21 1. "Affected land" or "affected property" means land or property subject to special
22 assessment or condemnation for a project.
- 23 2. "Affected landowners" means landowners whose land is subject to assessment or
24 condemnation.
- 25 2-3. "Assessment drain" means a drain financed in whole or in part by special
26 assessments.
- 27 4. "Benefit" means the extent to which society and economies impacted by a project are
28 made better off through lower costs, fewer damages, or enhancements.
- 29 5. "Benefited property" means property that accrues benefits from construction of a
30 project.
- 31 6. "Board" means the board of managers of a water resource district.

1 ~~3-7.~~ "Cleaning out and repairing of drain" means deepening and widening of drains as well
2 as removing obstructions or sediment, and any repair necessary to return the drain to
3 a satisfactory and useful condition.

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

11 ~~5-9.~~ "Lateral drain" means a drain constructed after the establishment of the original drain
12 or drainage system and which flows into such~~the~~ original drain or drainage system
13 from outside the limits of the original drain; ~~provided, that a determination by the board~~
14 ~~as to whether an existing or proposed drain is a lateral or a new drain within the~~
15 ~~meaning of this subsection shall be conclusive when entered upon the records of such~~
16 ~~board.~~

17 **SECTION 13.** A new section to chapter 61-21 of the North Dakota Century Code is created
18 and enacted as follows:

19 **Lateral drain determination.**

20 A determination by a water resource board regarding whether an existing or proposed drain
21 is a lateral drain or new drain is conclusive when entered upon the records of the board.

22 **SECTION 14.** A new section to chapter 61-21 of the North Dakota Century Code is created
23 and enacted as follows:

24 **Cost-benefit analyses for assessment drains - Limitations on assessments.**

25 1. A water resource board shall prepare a cost-benefit analysis of a proposed
26 assessment drain before the board may hold a hearing on the drain under section
27 61-21-13. The cost-benefit analysis must include calculations, in dollars, of the total
28 benefits anticipated from the drain and the total costs anticipated for the drain. If the
29 calculated dollar amount of benefits does not exceed the calculated dollar amount of
30 costs, the board may not levy special assessments for the drain.

- 1 2. The board or the board's agents shall inspect all lots, pieces, and parcels of land
2 which may be subject to assessment for a proposed drain to gather information for the
3 cost-benefit analysis. When calculating benefits the board shall consider, among other
4 factors, property values, degree of improvement of properties, productivity, the water
5 management policy as expressed in section 61-16.1-15, the present drainage facilities
6 under any existing drainage district, potential use of the proposed drain by the land,
7 whether the lands will be benefited or harmed by any change in the existing flow and
8 course of drainage water resulting from the construction of the drain, and other
9 matters as may be pertinent to the question of benefits. The anticipated costs must
10 include all costs to be paid from assessments, including construction and maintenance
11 costs, costs to acquire necessary property for the drain, and all other anticipated costs
12 for the drain.
- 13 3. Although the costs of a drain must be assessed against property in proportion to
14 benefits received from the drain, a water resource board may not assess any lot,
15 piece, or parcel of land or any county, city, or township an amount exceeding the dollar
16 amount of benefits anticipated to accrue to the lot, piece, parcel, county, city, or
17 township from a drain. A cost-benefit analysis prepared for a proposed drain must
18 include sufficient detail for the board to comply with this subsection.
- 19 4. Property belonging to the United States is exempt from assessment for drains, unless
20 the United States has provided for the payment of any assessment that may be levied
21 against the property for benefits received. Benefited property belonging to counties,
22 cities, school districts, park districts, and townships is not exempt from assessment,
23 and political subdivisions whose property is assessed shall provide for the payment of
24 the assessments, installments, and interest by the levy of taxes according to law. Any
25 county, township, or city assessed in its corporate capacity for benefits received shall
26 provide for the payment of the assessments, installments, and interest from the
27 political subdivision's general fund or by levy of a general property tax against all the
28 taxable property in the political subdivision in accordance with law. A tax limitation
29 provided by any statute of this state does not apply to tax levies made by a political
30 subdivision for the purpose of paying any special assessments made in accordance
31 with the provisions of this chapter.

1 **SECTION 15. AMENDMENT.** Section 61-21-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-21-13. Hearing on petition to establish drain and surveyor's report - Notice -**
4 **Contents - Results of cost-benefit analysis.**

5 1. Upon the filing of the surveyor's or engineer's report provided for in section 61-21-12
6 and after satisfying the requirements of section 14 of this Act, the board shall fix a date
7 and place for a public hearing on the petition. ~~Such~~The place of hearing shallmust be
8 in the vicinity of the proposed drain and shall be convenient and accessible for the
9 majority of the affected landowners subject to assessment for such drain or whose
10 property shall be subject to condemnation for the proposed drain.

11 2. At least ten days before ~~such~~the hearing, the board shall file with the county auditor a
12 list showing the percentage assessment against each parcel of land benefited by the
13 proposed drain and the approximate assessment in terms of money apportioned
14 thereto. ~~Notice of such filing shall be included in the notice of hearing on the~~
15 petitionthe results, in dollars, of the cost-benefit analysis for the drain showing the
16 drain's total anticipated benefits and costs and the anticipated benefits and
17 assessments for each affected lot, piece, or parcel of land and each affected county,
18 city, or township. A certificate signed by a majority of the members of the board
19 attesting the cost-benefit analysis includes a true and correct assessment of the
20 anticipated benefits of the proposed drain described to the best of the members'
21 judgment and identifying the several costs included in the analysis must be attached to
22 the results.

23 3. At least ten days' ~~notice of such~~days before the hearing, the board shall be given by
24 ~~publishing~~publish a notice of the hearing and the filing of the cost-benefit analysis
25 results at least once in the official newspaper of the county in which the proposed
26 drain is located. ~~In addition, each owner of land subject to assessment for the~~
27 ~~proposed drain and each landowner whose property shall be subject to condemnation~~
28 ~~for the proposed drain as shown by the record in the office of the recorder shall be~~
29 ~~mailed~~The board also shall mail each affected landowner a notice of ~~such~~the hearing
30 and the results of the cost-benefit analysis at the owner's post-office address as
31 shown by ~~such~~the records in the office of the recorder. Notices of ~~such~~the hearing

1 ~~shall~~must contain a copy of the petition submitted to the board for the drain and
2 specify the time and place ~~where the board will act upon the petition~~of the hearing.
3 The notice of hearing ~~shall~~also must specify the point or place of beginning of the
4 proposed drain and where ~~it~~the drain terminates, and ~~shall~~must describe the general
5 course of the drain as finally determined by the engineer and the board. The notice of
6 hearing ~~shall~~ must specify when and where votes for and against ~~such~~the
7 proposed drain ~~shall~~may be filed. The final date when votes must be filed ~~shall~~
8 ~~not~~must be no less than ten days after the date of the hearing on the petition. A ~~form~~
9 ~~of ballot~~ ~~shall~~must be mailed with the notice of hearing for use by the affected
10 landowners in voting for or against the proposed drain. An affidavit of mailing signed
11 by the attorney or clerk of the board or other person mailing ~~such~~the notices ~~shall~~must
12 be filed with the county auditor who shall file ~~such~~the affidavit with the records of the
13 proceedings pertaining to ~~that~~the drain. All persons ~~whose land may be subject to~~
14 ~~assessment for such drain or whose property shall be subject to condemnation for~~
15 ~~such drain~~affected landowners may appear before the board, ~~fully express their~~
16 ~~opinions, to express opinions~~ and offer evidence upon the ~~matters pertaining~~
17 ~~thereto~~proposed drain and cost-benefit analysis results.

18 **SECTION 16. AMENDMENT.** Section 61-21-14 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-21-14. Conduct of hearing on petition to establish drain.**

21 ~~Prior to~~At the hearing provided for in section 61-21-13, the board shall ~~first prepare a roster~~
22 ~~or roll of affected landowners subject to assessment for such drain or whose property shall be~~
23 ~~subject to condemnation for such drain, and shall limit voting rights to such landowners. A~~
24 ~~record shall be made by the board of~~record the affected landowners present in person or by
25 agent, and ~~such records shall~~the record must be preserved in the minutes of the meeting.
26 ~~Affected landowners shall then be informed of the probable total cost of the project and their~~
27 ~~individual share of such cost and the amount of their property to be condemned for such~~
28 ~~project~~The board also shall inform affected landowners of the results, in dollars, of the
29 cost-benefit analysis for the drain showing the drain's total anticipated benefits and costs and
30 the anticipated benefits and assessments for each affected lot, piece, or parcel of land and
31 each affected county, city, or township. The board shall fix a time, ~~which shall not be that may~~

1 ~~not end~~ less than ten days after the hearing on the petition; within which the votes for and
2 against the establishment of the proposed drain ~~shall~~may be filed with the board. Objections to
3 or approvals of the drain in writing may be filed with the board by persons eligible to vote and
4 ~~shall~~must be considered as votes for or against the proposed drain, as the case may be. A
5 ~~telegram shall be deemed writing, and any~~Any form of written approval or objection which
6 sufficiently indicates the intention of the writer ~~shall be~~is sufficient. Once the deadline for filing
7 votes for or against the proposed drain has been reached, ~~no more votes for or against such~~
8 ~~drain shall be filed and no person shall withdraw that person's name from the list of those voting~~
9 ~~for or against the proposed drain after the deadline for filing votes has been reached~~may not be
10 filed or withdrawn. Any withdrawals of objections to or approvals of the proposed drain before
11 that time ~~shall~~must be in writing ~~only~~. When the votes of affected landowners have been filed
12 and the deadline for filing votes ~~for and against such drain~~ has been reached, the board
13 immediately shall ~~immediately proceed to~~ determine whether or not more than fifty percent of
14 the votes filed, as determined by section 61-21-16, are in favor of the construction of the drain.
15 Until ~~such~~the determination is made, the board is without jurisdiction to take any further steps in
16 the matter except to determine whether more than fifty percent of the votes filed are in favor of
17 the drain and to adopt a resolution for discontinuance; if not more than fifty percent of the votes
18 filed favor construction of the drain.

19 **SECTION 17. AMENDMENT.** Section 61-21-16 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **61-21-16. Voting right ~~or power~~ of landowners.**

22 In order that there may be a fair relation between the amount of liability for assessments
23 and the power of objecting to the establishment of a proposed drain, ~~the voice or vote~~voting
24 rights of affected landowners on the question of establishing the drain ~~shall be arrived at in the~~
25 ~~following manner:~~

26 ~~The landowner or landowners of tracts of land affected by the drain shall~~are provided in this
27 section. Affected landowners have one vote for each dollar of assessment ~~that to which the~~
28 ~~owner's land is subject to~~ or one vote for each dollar of the assessed valuation of land
29 condemned for the drain, as estimated by the board under the provisions of section 61-21-12
30 and section 14 of this Act. It is the intent of this section to allow There may be only one vote for
31 each dollar of assessment, regardless of the number of owners of ~~such~~the tract of land. ~~Where~~if

1 more than one owner of ~~such~~the land exists, the votes shall ~~must~~ be prorated among ~~them~~the
2 owners in accordance with each owner's interest. A written power of attorney shall
3 ~~authorize~~authorizes an agent to cast the votes of ~~any~~the affected landowners that executed the
4 power of attorney.

5 **SECTION 18. AMENDMENT.** Section 61-21-20 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-21-20. Assessing cost of constructing and maintaining drain.**

8 1. After the making of the order establishing the drain, the board shall assess the
9 ~~percentage~~ of the cost of acquiring right of way and constructing and maintaining
10 ~~such~~the drain in accordance with benefits received, as determined by the cost-benefit
11 analysis, against:

- 12 1. a. Any county, township, or city ~~which is benefited thereby~~by the drain; and
13 2. b. Any lot, piece, parcel, or interest in land ~~which is either directly or indirectly~~
14 benefited by ~~such~~the drain alone or by ~~such~~the drain in connection with other
15 existing or proposed drains.

16 ~~No land~~

17 2. Land already included in and being assessed ~~by~~for an existing drainage district
18 ~~shall~~drain may not be included and assessed ~~in~~for any ~~newly formed drainage~~
19 ~~district~~new assessment drain unless it can be shown that ~~such~~the land will be
20 benefited by the construction of the new drain. ~~The board in considering the benefit~~
21 ~~and assessing the percentage of costs to each affected tract, parcel, or piece of land~~
22 ~~may, among other things, take into consideration the present drainage facilities under~~
23 ~~any existing drainage district, potential use of the proposed drain by such land,~~
24 ~~whether any such lands will be benefited or harmed by any change in the existing flow~~
25 ~~and course of drainage water by reason of the construction of the drain, and such~~
26 ~~other matters as may be pertinent to the question of benefits.~~

27 **SECTION 19. AMENDMENT.** Section 61-21-21 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-21-21. Assessment subject to review – ~~Notice of time and place~~Notice of hearing**
2 **on assessments.**

3 The ~~percentage~~ assessments provided for in section 61-21-20 ~~shall be~~subject to review,
4 ~~and at a public hearing.~~ The board shall provide ten days' notice of the time and place where
5 ~~such percentage~~the assessments will be reviewed by the board ~~shall be~~ given by publication in
6 a newspaper having general circulation in the county. In addition, each ~~owner of land~~ affected
7 ~~by the proposed drain as shown by the record in the office of the recorder or county treasurer~~
8 ~~shall~~landowner must be mailed a notice of ~~such~~the hearing at the owner's post-office address
9 as shown by ~~such~~ records in the office of the recorder or county treasurer, and an affidavit of
10 mailing shall must be filed with the proceedings of ~~such~~the drain.

11 **SECTION 20. AMENDMENT.** Section 61-21-22 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **61-21-22. Hearing on assessment - Appeal - Correction of assessments - Relocating**
14 **drain - Fees.**

15 At the hearing ~~provided for in section 61-21-21~~on assessments, the board shall ~~proceed to~~
16 hear all complaints relative to the ~~percentage~~ assessments and shall correct or confirm the
17 ~~same~~assessments. Should ~~landowners~~ subject to assessment or whose property is subject to
18 ~~condemnation for the construction of the proposed drain~~If affected landowners having a majority
19 of the possible votes, as determined by section 61-21-16, believe ~~that the assessment had~~the
20 assessments were not been fairly or equitably made, or ~~that the drain is not properly located or~~
21 designed, ~~they~~the landowners may appeal to the department of water resources by petition
22 within ten days after the hearing on assessments, to review the ~~percentage~~ assessments and ~~to~~
23 examine the location and design of the proposed drain. Upon the receipt of the petition, the
24 department shall examine the lands assessed and the location and design of the proposed
25 drain, ~~and should the department determine.~~ If the department determines the assessments
26 have not been made equitably, the department may correct the assessments, subject to
27 section 14 of this Act, and the department's correction and adjustment of assessments are final.
28 ~~Should the department determine~~If the department determines the drain has been improperly
29 located or designed, the department may order a relocation and redesign. The relocation and
30 redesign must be followed in the construction of the proposed drain. For the department's
31 services in reviewing the assessments and examining the location and design, the department

1 is entitled to ten dollars per day and actual and necessary expenses during the time the
2 department is engaged upon the work. All moneys received by the department must be paid
3 into the state treasury and credited to the general fund. ~~After the hearing provided in this~~
4 ~~section, the board shall make a finding that the benefits to all tracts of land will exceed the costs~~
5 ~~that will be assessed against the lands.~~ Any landowner who claims the landowner will receive
6 no benefit from the construction of a new drain may appeal the question of whether there is any
7 benefit to the department upon the filing of a bond in the sum of two hundred fifty dollars with
8 the board for the payment of the costs of the department in the matter. The department may not
9 determine the specific amount of benefits upon an appeal by an individual landowner, but shall
10 determine only whether there is any benefit to the landowner, ~~and the.~~ The determination of the
11 department is final.

12 **SECTION 21. AMENDMENT.** Section 61-21-23 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-21-23. Recording assessment.**

15 ~~After the percentage assessment of benefits has been made, as provided in section~~
16 ~~61-21-20 and~~ assessments are confirmed upon hearing as provided in section 61-21-22, the
17 board shall record ~~such percentage~~ the assessments in the permanent records of the drain, and
18 ~~such percentage assessment shall further~~ the assessments must be permanently recorded by
19 the county auditor in a book of drainage assessments.

20 **SECTION 22. REPEAL.** Sections 61-16.1-01 and 61-16.1-21 of the North Dakota Century
21 Code are repealed.