

## **CHAPTER 61-16.1 OPERATION OF WATER RESOURCE DISTRICTS**

### **61-16.1-01. Legislative intent and purpose.**

Repealed by S.L. 2023, ch. 569, § 36.

### **61-16.1-02. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means a drain financed in whole or in part by special assessment.
3. "Benefited property" means property that has accrued a benefit from a project.
4. "Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.
5. "Cleaning out and repairing a drain" means deepening and widening a drain and removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
6. "Commission" means the state water commission.
7. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
8. "Costs of the frivolous complaint" means all reasonable costs associated with the requisite proceedings regarding the removal of obstructions to a drain, removal of a noncomplying dike or dam, or closing a noncomplying drain, including all reasonable construction costs; all reasonable attorney's fees and legal expenses; all reasonable engineering fees, including investigation and determination costs; compliance inspections; necessary technical memorandum and deficiency review; and all costs associated with any hearing conducted by a district, including preparation and issuance of any findings of fact and any final closure order.
9. "District" means a water resource district.
10. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for drainage, and any artificial channel constructed for drainage. The term includes dikes and appurtenant works and may include more than one watercourse or artificial channel when the watercourses or channels drain land within a practical drainage area.
11. "Frivolous" means allegations and denials in any complaint filed with a district made without reasonable cause and not in good faith.
12. "Lateral drain" means a drain constructed after the establishment of an original drain or drainage system and which flows into the original drain or drainage system from outside the limits of the original drain.
13. "Practical drainage area" means, for assessment drains, the practical drainage area determined by the survey and examination required under section 61-16.1-17.
14. "Project" means any undertaking for water conservation; flood control; water supply; water delivery; erosion control and watershed improvement; drainage of surface waters; collection, processing, and treatment of sewage; discharge of sewage effluent; or any combination of purposes in this subsection, and includes incidental features of the undertaking.
15. "Water resource board" or "board" means the water resource district's board of managers.

### **61-16.1-03. Water resource districts - Boundaries.**

Repealed by S.L. 1985, ch. 678, § 2.

### **61-16.1-04. Minutes, books, and records.**

The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and

business of the district. The unofficial minutes of the meeting must be provided to the official newspaper of the county for publication or, if applicable, posted to the water resource board's website or the official county website within ten days. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

**61-16.1-05. Bonds of treasurer and appointive officers.**

The treasurer of a district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the state insurance commissioner by the secretary of the district. Upon notification by the state bonding fund of the premium required, the district treasurer shall remit the same.

**61-16.1-06. District budget - Financial report - Tax levy - Financing by special assessment.**

The fiscal year of the district begins January first and ends December thirty-first. The water resource board shall estimate the expenses of the district before October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan. In the year for which the levy is sought, a water resource board seeking approval of a property tax levy under this chapter must file with the county auditor of each county in the district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the water resource district during that year. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of that county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

**61-16.1-07. District may issue warrants in anticipation of taxes levied to pay current expenses.**

After a district has been established and organized and a water resource board has been appointed, the water resource board, for the purpose of paying current district expenses, including per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution, may authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. The warrants shall bear the rate of interest set by the board, which shall not exceed twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in

which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant and shall be signed by the chairman of the water resource board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

**61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds.**

The treasurer of each county in which a district, or a part of a district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. In June and December of each year, and as the county commission may otherwise require, the district treasurer shall report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

**61-16.1-09. Powers of water resource board.**

Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain as follows:
  - a. Except as permitted under subdivision b, the board shall comply with title 32 for the purpose of acquiring and securing by eminent domain any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby.
  - b. (1) If the interest sought to be acquired is an easement for a right of way for any project authorized in this chapter for which federal or state funds have been made available, the district may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:
    - (a) Conducting informal negotiations for not less than sixty days.
    - (b) If informal negotiations fail, the district shall engage in formal negotiations by:
      - [1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.

- [2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
  - [3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
- (2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.
  - (3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the district may take immediate possession of the right of way, but not a blanket easement, if the district files an affidavit by the chairman of the water resource board which states the district has fulfilled the required negotiation steps and deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
  - (4) Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
  - (5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
  4. Procure the services of engineers and other technical experts, and employ an attorney to assist, advise, and act for it in its proceedings.
  5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, drains, or watercourses and the flow of water in them by changing, widening, deepening, straightening, or otherwise improving them; or by cleaning out and repairing a drain.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the requirements of this chapter.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.
18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when

such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.

19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The department of transportation, railroads, counties, and townships shall cooperate with the districts in this effort. Each district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.
22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.
23. Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.
24. Establish, deepen, widen, and improve drains; and extend drains as necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area.
25. Install artificial subsurface drainage systems.

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

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris removal of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-18. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be resolved by the department of water resources. All provisions of this chapter apply to assessments levied under this section except:
  - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property.
  - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the

assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.

- (1) If a board that undertakes a project finds the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
  - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
  - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

#### **61-16.1-09.2. Release of easements - Procedure.**

When it deems such action to be in the best interests of the district or other political subdivision, a water resource board or governing body of another political subdivision may release easements assigned to it from the state for the construction, operation, and maintenance of dams, along with access to the dams, if the dams are no longer useful.

#### **61-16.1-10. Responsibilities and duties of water resource board.**

Each water resource board shall:

1. Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project shall be based on the following principles:

- a. Reasonable necessity of the project.
  - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
  - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

**61-16.1-11. Joint exercise of powers.**

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by this title. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint water resource board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board. A joint board created under this section is a political subdivision of the state.
2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.
3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.
4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.
6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.
8. All districts within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall, by agreement, form and remain a member of a joint water resource board relative to the district's respective drainage basin. All agreements and subsequent amendments must be filed with the department of water resources. Notwithstanding other provisions of law, the board of county commissioners of the member districts in the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins may approve a levy of tax not to exceed two mills upon



the taxable valuation of the real property within each joint board's respective drainage basin.

**61-16.1-12. Scope of water resource board's extraterritorial contractual authority - Board may acquire property in adjoining states and provinces.**

A water resource board shall have the right, power, and authority to enter into contracts or other arrangements for water conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, other corporations, or limited liability companies, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states. Such contracts or arrangements can provide for cooperation or assistance in planning, constructing, maintaining, and operating such projects and in making investigations and reports thereon, and for the carrying out of any other provision of this chapter. A water resource board may purchase, lease, or acquire land or other property in adjoining states or provinces to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. No water resource board of any district shall have the right, power, or authority to connect boundary waters having different natural outlets by artificial means so that the waters of one may be discharged into the other.

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

A water resource board may enter an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount the district will be obligated to pay in accordance with the agreement, over and above any other funds that are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties that in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost that the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice also must set forth the time and place where the board shall meet to determine whether the project is approved. The notice must also be published once in a newspaper of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, township, school district, park district, or other political subdivision, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any

county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the mailing of the resolution, at which time the board shall determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24. Sections 61-16.1-25 through 61-16.1-36 apply to the assessments and the special warrants issued pursuant to this section.

**61-16.1-13. Master plans.**

Repealed by S.L. 1985, ch. 678, § 2.

**61-16.1-14. Contracts for construction or maintenance of project.**

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section 48-01.2-02, the board must let a contract in accordance with chapter 48-01.2.

**61-16.1-15. Initiating project financed through revenue bonds, general taxes, or special assessments - Bond required.**

A water resource board, either upon request or by its own motion, may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. A request under this section must be in writing and be accompanied by a bond in a sum the water resource board deems sufficient to pay all expenses of the board related to the petition in case the petition is denied. If the proposed project is an assessment drain, the request must identify the starting point, terminus, and general course of the proposed drain and be signed by at least two owners of property that would be drained by the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the residents of any city, the petition must be signed by a sufficient number of the property owners of the city to satisfy the board there is a public demand for the drain. If a petition under this section is approved by voters under section 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay any expenses incurred by the board related to the petition.

**61-16.1-15..1. Projects or benefits in more than one county.**

1. The districts from two or more counties may agree to jointly construct or assign benefits and assessments for a project. Two or more districts shall create a joint board under section 61-16.1-11 before constructing a project and before assessing the lands or premises for a project that benefits or is located in more than one county. If the districts do not agree to undertake a joint project, a district may undertake the project by providing notice to the joint board where the project is located, in either the Red River, James River, Mouse River, Missouri River, or Devils Lake drainage basin, together with the engineer's report required under section 61-16.1-17.

2. If the joint board finds the project is necessary, and the benefits of the project will exceed the costs, the joint board shall proceed with the procedures in sections 61-16.1-15 through 61-16.1-36 regarding:
  - a. The creation, construction, alteration, repair, operation, and maintenance of a project and an assessment district;
  - b. The determination and levy of assessments against property benefited by the project; and
  - c. The special warrants issued pursuant to this chapter.
3. If the assessment vote is successful, the joint board shall construct, own, operate, and maintain the project. The joint board shall administer the corresponding assessment district for the project in accordance with this chapter.

#### **61-16.1-16. Revenue bonds.**

Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of fifty million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds shall not be a general obligation of any county and shall not be secured by property taxes.

#### **61-16.1-16.1. Right of way - How acquired - Assessment of damages - Issuance of warrants.**

If lands assessed for drainage benefits are not contiguous to the drain, the water resource board may exercise eminent domain to acquire a right of way easement to the drain over the land of others. The right of way, when acquired, is the property of the water resource district in which the lands are located. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer which have been collected for the construction of the drain for which the right of way is sought.

#### **61-16.1-17. Assessment projects - Procedure - Engineer report.**

When a water resource board receives a petition or approves a motion to construct a project with funds raised through the collection of special assessments, the water resource board shall examine the proposed project. If the water resource board decides further proceedings are warranted, the board shall adopt a resolution declaring constructing and maintaining the proposed project is necessary, identifying the nature and purpose of the proposed project, and designating a registered engineer to assist the board. As soon as practicable, the board shall publish the resolution in the newspaper of general circulation in each area in which lands that reasonably may be condemned or subject to assessment for the project are located. For the purpose of making examinations or surveys, the board or the board's agents, after written notice to each landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, specifications, and total estimated costs of the proposed project. The estimate of costs prepared by the engineer must include the cost to acquire rights of way and be sufficiently detailed for the board to determine the probable share of the total costs to be assessed against each of the affected landowners in the proposed project assessment district.

**61-16.1-18. Hearing on assessment project - Notice.**

1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for a public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project.
2. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed; the amount each would be benefited by the proposed project; and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned to each parcel.
3. The water resource board shall provide notice of the hearing which must:
  - a. Include a copy of the petition, if any, and the resolution of the board;
  - b. Specify the time and place of the hearing;
  - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board;
  - d. Specify when and where votes concerning the proposed project may be filed;
  - e. Include the assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned to each parcel;
  - f. Be mailed with a ballot to vote on the proposed project to each affected landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located. The board may send the notice and ballot by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board; and
  - g. Be published once a week for two consecutive weeks in the newspaper of general circulation in the area in which the affected lands are located.
4. The date set for the hearing must be at least twenty days after the day the notice is mailed. A record of the hearing must be made by the board, include a list of affected landowners present in person or by agent, and be preserved in the minutes of the meeting. Each affected landowner and the governing body of any county, township, or city to be assessed must be informed at the hearing of the probable total cost of the project, the share of the cost the landowner or governing body will be assessed, and the portion of landowner or governing body's property, if any, to be condemned for the project.

**61-16.1-19. Voting on proposed projects - Notice of result.**

At the hearing on an assessment project, the affected landowners, and any county, township, or city to be assessed, must be informed when and where votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes for or against the project with the secretary of the water resource board. If a vote is mailed to the secretary, the vote is timely if the vote is received within the voting period. During the voting period, ballots may not be opened and votes may not be counted. Once the deadline for filing votes has been reached, votes may not be filed or withdrawn. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the deadline for filing votes has passed, the board immediately shall determine whether the project is approved. If the board finds fifty percent or more of the total votes filed are against the proposed project, the vote constitutes a bar against proceeding further with the project. If the board finds the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, may contract or provide for the

construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or both. If there is an agreement for a party other than the board to let the contract, the board may dispense with all the requirements of title 40. Upon making an order establishing a project or determining the vote bars establishing a project, the board shall publish notice of the order or determination in a newspaper of general circulation in the area in which the affected lands are located. The notice must advise affected landowners of their right to appeal. Any right of appeal begins to run on the date of publication of the notice.

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

The allocation of voting rights among affected landowners on the question of establishing a proposed project must provide a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of the project. Affected landowners have one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed also has one vote for each dollar of assessment against the county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If there is more than one owner of the land, the votes must be prorated among the owners in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of the affected landowner that executed the power of attorney.

**61-16.1-21. Calculating benefits and assessments - Certification.**

1. If the water resource board proposes to make any special assessment under this chapter, the board, before the hearing required under section 61-16.1-18, shall inspect all lots and parcels of land which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be benefited by the construction of the work for which the assessment is made. The board shall determine the proportion of the total cost of acquiring right of way and constructing and maintaining the project in accordance with, but not exceeding, the benefits received, against any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly and any lot, piece, or parcel of land which is directly benefited by the project.
2. In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, and productivity. Property belonging to the United States is exempt from assessment under this chapter, unless the United States has provided for the payment of any assessment levied against the property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships is not exempt from assessment under this chapter, and political subdivisions whose property is assessed shall provide for the payment of the assessments, installments, and interest by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of the assessments, installments, and interest from the political subdivision's general fund or by levy of a general property tax against all the taxable property in the political subdivision in accordance with law. Tax limitations provided by any statute of this state do not apply to tax levies made by a political subdivision for the purpose of paying any special assessments under this chapter.
3. The board shall prepare a list identifying the assessments allocated to each lot and parcel of land for the project. A certificate signed by a majority of the members of the board must be attached to the list and state the assessment in the list is based on a correct determination of the benefits to the assessed land described to the best of the members' judgment. The certificate also must identify the several items of expense included in the assessment.

**61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.**

1. After entering an order establishing the project, the water resource board shall provide notice of a hearing at which the board will meet to hear objections to the proposed assessments from any interested party or agent for an interested party. The notice must:
  - a. Include a copy of the order establishing the project;
  - b. Specify the time and place of the hearing;
  - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board;
  - d. Include the assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned;
  - e. Be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board; and
  - f. Be published once a week for two consecutive weeks in the newspaper of general circulation in the area in which the affected lands are located.
2. The date set for the hearing must be at least twenty days after the notice is mailed. At the hearing, the board may alter the assessments as the board deems just and necessary to correct any error in the assessment but shall make the aggregate of all assessments equal to either the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board then shall confirm the assessment list. The secretary shall attach to the list a certificate stating the list is correct as confirmed by the board and shall file the list in the office of the secretary.

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

Within twenty days after the meeting at which the water resource board approves the final assessment list required under section 61-16.1-22:

1. Affected landowners and any political subdivision subject to assessment, having not less than thirty-three percent of the possible votes as determined by section 61-16.1-20, which believe the assessment was not made fairly or equitably or the project is not located or designed properly, may appeal to the department of water resources by petition to review the assessments and examine the location and design of the proposed project. Upon receipt of the petition the department shall examine the lands assessed and the location and design of the proposed project, and if it appears the assessments were not made equitably, the department may correct the assessments, and the department's correction and adjustment of the assessment is final. If the department believes the project was located or designed improperly, the department may order a relocation and redesign that must be followed in the construction of the proposed project.
2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the department in the matter, any landowner or political subdivision claiming the landowner or political subdivision will receive no benefit from the construction of a new project may appeal that issue to the department. Upon an appeal by an individual landowner or political subdivision, the department may determine whether there is any benefit to the landowner or political subdivision, but not the specific amount of benefit. The determination of the department regarding whether there is a benefit is final.
3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation.

Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section.

**61-16.1-23.1. Notice of letting of contracts.**

After the recording of percentage assessments as provided in section 61-16.1-22, the board shall give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. The notice must be published at least once in a newspaper having general circulation in the county.

**61-16.1-23.2. Extension of time to contractors - Reletting unfinished part of contract.**

A water resource board may grant a reasonable extension of time for the completion of any contract. If a board reasonably believes the work required under a contract will not be completed by the agreed upon deadline, the board may relet any unfinished portion to the lowest responsible bidder, and shall take security as before. The cost of completing the unfinished portions over and above the contract price, and the expense of notices and reletting, must be collected by the board from the parties first contracting. The board may not terminate a contract without giving five days' notice to the contractor, provided the contractor may be found or has a known place of residence in the county. The notice may be given to the contractor personally or may be left at the contractor's place of residence.

**61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the water resource board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as the costs have been ascertained. The certificate must include the estimated construction cost under the terms of any contract for the project; a reasonable allowance for the cost of extra work that may be authorized under the plans and specifications; acquisition of right of way; engineering, fiscal agents' and attorney's fees for services in connection with the authorization and financing of the project; cost of publication of required notices; printing of improvement warrants; cost necessarily paid for damages caused by the improvement; interest during the construction period; and all expenses incurred in making the improvement and levy of assessments.

A contract that exceeds, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners is prohibited.

**61-16.1-25. Financial reports - Liability for deficiencies.**

In June and December of each year and as otherwise required by the county commission appointing the managers of the district, the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding period and the amount and items of expenditure during that period. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of January of each year, the water resource board shall prepare a complete statement of the condition of the finances of the district for the past year and shall cause the same to be filed with the county auditor of each county in which the district lies on or before February first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its February meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding the

same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

**61-16.1-26. Reassessment of benefits.**

A water resource board may hold at any time or, upon petition of any affected landowner or assessed political subdivision after a project has been in existence for at least one year, shall hold a hearing to determine the benefits of the project to each tract of land affected. Notice of the hearing must be given by publication once each week for three consecutive weeks, beginning at least thirty days before the hearing, in the newspaper having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each owner of land in the assessed district at the landowner's address as shown by the tax rolls of the counties in which the affected property is located. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. Regardless of the number of petitions received, the board is not required to conduct a reassessment more than once every ten years. An assessment or balance supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of the fund remain unpaid and moneys are not available in the fund to pay all the bonds in full, with interest. Costs of maintenance must be prorated in accordance with any adopted plan for reassessment of benefits.

**61-16.1-26.1. Reconveyance of land no longer required for drainage.**

When land acquired for drainage is no longer required for drainage, the board of county commissioners may reconvey the land to the present owner of the adjacent property if the present owner of the adjacent property surrenders all warrants issued in payment of the land or repays the amount of cash paid for the land.

**61-16.1-27. Correction of errors and mistakes in special assessments.**

If mathematical errors or other mistakes occur in making any assessment and result in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as the chapter relates to special assessments.



**61-16.1-28. Certification of assessments to county auditor.**

When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments must bear. The interest rate may not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments must commence on the date the assessments are confirmed finally by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after the date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to the special assessments are situated, the total amount assessed against lands in that county and the proportion or percentage of the amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district also shall file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part of the cost, if any, to be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining the project in the same proportion as the original costs of construction or, in the event a reassessment of benefits has been adopted, the board shall prorate costs in accordance with the reassessment of benefits.

**61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to district.**

The county auditor of each county shall extend the special assessments certified to the county auditor on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

**61-16.1-30. Lien of special assessment.**

A special assessment imposed by a district, together with interest and penalties which accrue thereon, shall become a lien upon the property on which the assessment is levied from the time the assessment list is approved by the water resource board until the assessment is fully paid. Such liens shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter shall be considered notice to all subsequent encumbrancers of the priority of special assessments imposed under this chapter.

**61-16.1-31. Foreclosure of tax lien on property when general and special assessment taxes are delinquent.**

Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57.

If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien shall state that the foreclosure is for special assessments and a tax deed in such case shall be issued in the usual course of procedure.

**61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions.**

The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any project under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason of any of the following:

1. Any error of any officer or board in the location and establishment thereof.
2. Any error or informality appearing in the record of the proceedings by which any project was established.
3. A lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding is brought to reverse or declare void the proceedings by which any project has been established, or to enjoin the tax levied to pay therefor, on application of either party, shall order examination of the premises, or survey of the same, or both, as may be deemed necessary. The court, on a final hearing, shall enter an order which is just and equitable, and may order the tax or any part thereof to remain on the tax lists for collection, or if the tax were paid under protest, may order, if justice requires, the whole or any part thereof to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

**61-16.1-33. Water resource board may apportion assessments for benefits of a project against a county or city or any tract of land benefited.**

Whenever a water resource board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by a project and that the county or such township, municipality, tract, piece, or parcel of land was not included in the project area assessed for the cost of construction and maintenance of the project when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such project and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such project, and the expense of maintenance, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the project to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the project was established, and by mailing such notice to the governing body of the county, township, municipality, and to the owner, as determined by the records in the office of the recorder or county treasurer of each tract, piece, or parcel of land found to be benefited since the establishment of the project. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

**61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons.**

A district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. If the warrants are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 may be pledged to payment of those warrants, except that the first maturity date of any such warrant shall not be less than two years from the date of issuance. Warrants issued under this section shall be in such amounts as in the judgment of the water resource board will be necessary for the project. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon their face the purpose for which they are issued and the project fund from which they are payable and shall be signed by the chairman of the water resource board and countersigned by the secretary of the district. The warrants shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

#### **61-16.1-34.1. Drain warrants - Terms and amounts.**

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection with the acquisition or construction, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-16.1-28, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

#### **61-16.1-34.2. Settlement of unpaid warrants.**

A board of county commissioners may negotiate and execute a settlement with the owners of drain warrants and pay the amount of the settlement from the general fund of the county if:

1. Drain warrants issued pursuant to the establishment of a drain in two or more counties remain unpaid;
2. The amounts realized from the original assessments are not sufficient to pay the warrants;
3. An additional assessment would be necessary to meet the deficit; and
4. The board finds the county has received benefits from the drain by reasons of public health, convenience, or welfare and, as a result, may be liable for assessment or reassessment and the credit of the county is or may be affected by the existence of the outstanding and unpaid warrants.

#### **61-16.1-35. Warrants may be used in making payments on contract - Warrants payable out of fund on which drawn - May be used to pay special assessments.**

Improvement warrants may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds thereof, less accrued interest, shall be credited to the construction account of such fund and shall be used exclusively to pay such contracts and construction costs. Any balance remaining in any construction account after completion of a project shall be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment warrants and any interest coupons attached thereto as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the warrants and any coupons when paid.

**61-16.1-36. Refunding special assessment warrants - Purposes for which such warrants may be issued - Payment of warrants.**

Any district having outstanding special assessment warrants, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the warrant holders, may issue refunding special assessment warrants or bonds if there is not sufficient money in the project fund against which such warrants are drawn to pay the same. The issuance of refunding warrants or bonds shall be authorized by resolution of the water resource board. The resolution shall describe the warrants to be refunded and the amount and maturity thereof. Refunding warrants may be issued for any of the following purposes:

1. Extend the maturities of warrants payable in whole or in part by special assessments.
2. Reduce the interest on such warrants.
3. Equalize the general property tax which the district may be, or may become, obligated to levy in order to cover deficiencies in the fund against which warrants were issued.

Refunding warrants or bonds shall bear such date, be in such date, be in such denominations, and shall mature serially within such time, not exceeding thirty years from the date of issuance, as the water resource board shall determine. The average rate of interest on such warrants shall not exceed the average rate of interest on refunded warrants.

The treasurer of the district shall pay special assessment warrants, and the interest coupons attached thereto, as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the warrants when paid.

Any deficiency in any fund created for the payment of district warrants payable in whole or in part out of collections of special assessment taxes shall be the general obligation of the water resource district.

**61-16.1-37. Commission, department of water resources, and water resource board shall encourage both structural and nonstructural alternatives.**

The commission, department of water resources, and the appropriate water resource board shall encourage both structural and nonstructural solutions to water management problems within the district by federal and state agencies, private individuals, and other persons, and shall lend their assistance to facilitate appropriate solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, are subject to all the provisions of this chapter unless specifically exempted.

**61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.**

Dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or water storage must be constructed in accordance with this chapter. A permit is required from the department for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water; a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water; an agricultural dike capable of protecting more than eighty acres [32.37 hectares] of land area; or any dike capable of protecting an occupied residence or structure or public infrastructure. A permit application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be submitted to the department of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height, agricultural dikes, or a farmstead ring dike, the plans and specifications must be completed by a professional engineer. The professional engineer must be registered in this state. The department shall consider the application in such detail as the department deems necessary and proper. The department shall refuse to allow the construction of any unsafe or improper dike, dam, or other device that would interfere with the orderly control of the water resources of the district, or may order changes, conditions, or modifications as in the department's judgment may be necessary for safety or the protection of property. Within forty-five days after application receipt, except in unique or complex situations, the department shall complete the initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the

contemplated project is located. The board shall consider the application within forty-five days, and suggest any changes, conditions, or modifications to the department. If the board approves the application, the board shall forward the approved application to the department. If the board fails to respond within forty-five days, the board will be deemed to have no changes, conditions, or modifications to make. The department shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The department may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device without first securing a necessary permit, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

**61-16.1-39. Dams or other devices constructed within a district shall come under control of a water resource board.**

All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted, are under the jurisdiction of the water resource board for the district within which the dam, dike, works, or device exists or is to be constructed. The district's jurisdiction over the dam, dike, works, or device does not affect the commission's or department's authority relative to the dam, dike, works, or device. No changes or modification of any existing dams, dikes, or other works or devices may be made without complying fully with the provisions of this chapter.

**61-16.1-39.1. Petition for maintenance - Bond required.**

A written petition for maintenance of a project other than an assessment drain may be made to the board under this section. The petition shall designate the maintenance requested. The petition must be signed by six, or if a majority is less than six, by a majority of the landowners within the area benefited by the project. The petitioners shall supply a surety bond in the amount of two hundred fifty dollars. The bond must be for the payment of costs if the board finds the petition was improvidently made.

**61-16.1-39.2. Maintenance of project - Exception.**

If, upon receipt of a petition meeting the requirements of section 61-16.1-39.1, or upon the board's own motion, the board determines a project established under the provisions of this chapter requires maintenance, the board may provide the required maintenance by using the same method used initially to finance the project. Unless otherwise provided by law or agreement, the participation of the state in financing the initial project does not bind the state to finance any maintenance. Any maintenance financed through special assessments may not exceed the maximum levy established by section 61-16.1-45. This section does not apply to maintenance of assessment drains.

**61-16.1-40. When dams constructed by federal agency under control of district.**

Any dam, dike, or other water control device or flood control project constructed by or with the assistance of any federal agency but which is not maintained or operated by any federal agency shall become the responsibility of the district where it is located. The district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary.

**61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established.**

With regard to projects constructed by a federal agency, including the soil conservation service or natural resources conservation service, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed four dollars per acre [.40 hectare] annually on agricultural lands and may not exceed two dollars annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the

establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members. If a board that undertakes a project finds that the project may benefit lands in this state outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located. The board of each water resource district containing lands benefited by a project must approve the project and assessment by vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by vote of two-thirds of its members. If a project and assessment is not approved by all affected water resource boards and boards of county commissioners, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are jointly addressed. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside of the district. Before an assessment may be levied under this section, a public hearing must be held. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

**61-16.1-41. Permit to drain waters required - Penalty.**

Repealed by S.L. 1987, ch. 642, § 13.

**61-16.1-41.1. Removal or placement of fill.**

Prior to removing or placing any fill adjacent to a watercourse, the person responsible shall provide written notice to the district describing the amount and type of fill to be placed or removed and the location of the activity.

For purposes of this section, "adjacent" means within two hundred feet [60.96 meters] of the bank of the body of water during normal flow or stage.

The requirements of this section do not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission pursuant to chapter 38-14.1.

**61-16.1-42. Drains along and across public roads and railroads.**

1. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of the road. If, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a highway, the water resource board shall notify and solicit guidance from the department of transportation, board of county commissioners, or board of township supervisors, as the case may be, as soon as practicable. If the water resource board determines the drain must be run across the highway after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts or bridges must be allocated as provided under section 61-16.1-43. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned.
2. A drain may be laid along any railroad when necessary, but not to the injury of the railroad. If, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a railroad, the water resource board shall notify and solicit guidance from the railroad company

as soon as practicable. If the water resource board determines the drain must be run across the railroad after considering any guidance received from the railroad company, the railroad company, when notified of the water resource board's determination, shall make the necessary opening through such railroad, build the required bridges and culverts, and keep them in repair.

**61-16.1-43. Construction of bridges and culverts - Costs.**

1. The water resource board shall construct any bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by the drain. The cost of constructing the bridge or culvert must be charged as part of the cost of constructing the drain. The bridge or culvert must be maintained under the authority of the water resource board, and the necessary expense must be deemed a part of the cost of maintenance.
2. When any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the water resource board shall notify the county or township with authority for the highway and provide the county or township reasonable time to review and provide input on the plans for the bridge or culvert. The bridge or culvert must be maintained by the county or township and all necessary maintenance expenses must be borne forty percent by the county and sixty percent by the water resource board, unless otherwise agreed upon by the water resource board and the highway authority. If the highway authority and the water resource board cannot agree on the necessity or proper methodology for maintaining the bridge or culvert, the requesting party may appeal the denial under chapter 28-34. The cost of constructing the bridge or culvert must be shared in the following manner:
  - a. If funds are available, the state water commission may participate according to the commission's rules or policies. The remaining cost must be borne forty percent by the county and sixty percent by the district that created the need for the construction.
  - b. If funds are not available to the commission for participation, forty percent of the cost must be paid by the county and sixty percent must be charged as the cost of the drain to the district.
  - c. Upon request from the water resource board, the county shall request federal emergency funds for the construction. If the bridge or culvert is constructed with federal financial participation, including any federal emergency funds, the costs exceeding the amount of the federal participation must be borne by the district and county according to the provisions of this section.

**61-16.1-43.1. Assessment drain culverts.**

If, during the preparation of the report required under section 61-16.1-17 or during the planning for maintenance or reconstruction of an existing assessment drain, a water resource board discovers it may be necessary to install a culvert through a road not on the route of the assessment drain, but which is within the assessment area and necessary for surface water to reach the assessment drain, the water resource board shall notify and solicit guidance from the department of transportation, board of county commissioners, or board of township supervisors, as the case may be, as soon as practicable. If the water resource board determines the culvert is necessary after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts must be allocated as provided under section 61-16.1-43.

#### **61-16.1-44. Culvert and pipe arch bids and acceptance.**

A water resource board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

#### **61-16.1-45. Maintenance of drainage projects.**

1. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the maintenance may not exceed four dollars per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:
  - a. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of four dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full four dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
  - b. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed two dollars for each five hundred dollars of taxable valuation of the nonagricultural property.
2. In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for six years.
3. If the cost of, or obligation for, the cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

#### **61-16.1-46. Establishing new drains in location of invalid or abandoned drain.**

If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the water resource board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-17 through 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings, and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.



**61-16.1-47. Drain kept open and in repair by water resource board.**

All assessment drains that have been constructed in any district, except township drains, shall be under the charge of the water resource board and it shall be the duty of the board to keep those drains open and in good repair. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any assessment drain when requested to do so by petition of the affected landowners having fifty percent or more of the possible votes, as determined according to section 61-16.1-20.

**61-16.1-48. Assessment of costs of cleaning and repairing drains.**

The cost of cleaning out and repairing an assessment drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits if there has been a reassessment of benefits under the provisions of section 61-16.1-26. If no assessment for construction costs or reassessment of benefits has been made, the water resource board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

**61-16.1-49. Petition for a lateral drain - Bond of petitioners.**

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain; provided, that a determination by a water resource board as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.
2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days, may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

3. If one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the district for the construction of a lateral drain or ditch, the district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

**61-16.1-49.1. Designation of lateral drain.**

A determination by a water resource board as to whether an existing or proposed drain is a lateral drain is a conclusive determination when entered on the records of the board.

**61-16.1-50. Drains having a common outlet may be consolidated.**

Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the water resource board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

**61-16.1-50.1. Procedure to construct or extend an assessment drain through or into two or more counties.**

To construct or extend an assessment drain in two or more counties, a petition must be presented to the several water resource boards for the area in which the drain will lie for the establishment of the drain under this chapter. The boards shall hold a joint meeting and shall determine the necessity or expediency of the establishment of the drain. To proceed with the drain, the boards shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose the boards shall consider the entire course of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to accrue to the lands in each county, the boards shall submit the points in controversy to the department of water resources, and the department's decision is final. The boards may apportion the cost of establishing and constructing the entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue to the county's lands. When the boards have apportioned the costs, the boards shall make written reports of the apportionment to the auditors of the several counties affected. The reports must show the portion of cost of the entire drain to be paid by taxes upon the lands in each of the counties and must be signed by the boards of all counties affected. Upon the filing of the reports, the several boards shall meet and assess against the lands in each of the counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The provisions of this chapter relating to drains within a single county govern the establishment, construction, maintenance, repair, and cleanout of the drains.

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

1. If a water resource board determines that an obstruction to a drain has been caused by the result of a natural occurrence, such as sedimentation or vegetation, or by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice also must be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction and the opinion of the board as to its cause, and must state if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice also must state the affected landowner, 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 apply immediately to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction.

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. A landowner 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 under this section is not a prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

2. For the purposes of this section, "an obstruction to a drain" means a natural or artificial barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch that materially affects the free flow of waters in the watercourse or drain.
3. Following removal of an obstruction to a drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

**61-16.1-52. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction.**

Repealed by S.L. 1987, ch. 642, § 13.

**61-16.1-52.1. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

If the board determines a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's address of record. A copy of the notice also must be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board determines, against the property of the landowner responsible. The notice also must state the affected landowner, 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 apply immediately to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. 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. A landowner 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 for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

**61-16.1-53. Removal of a noncomplying dike, dam, or other device - Notice and hearing - Appeal - Injunction.**

1. 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 dike, dam, or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a

medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by 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 the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, 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 constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. 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 proportion to the responsibility of the landowners. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant.

2. Following removal of an unauthorized dike, dam, or other device, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

**61-16.1-53.1. Appeal of board decisions - Department of water resources review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.**

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the department of water resources. The appeal to the department must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the department which must state specifically the reason why the board's decision is erroneous. The appealing party also shall submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The department may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the department of water resources within one hundred fifty days of the submittal date of the original complaint. Without reference to chapter 28-32, the department shall cause the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the department of water resources determines a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the department shall take one of these three actions:
  - a. Notify the landowner by certified mail at the landowner's post-office address of record;
  - b. Return the matter to the jurisdiction of the board along with the investigation report; or

- c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the dam, dike, or other device is not removed within a reasonable time as determined by the department, but not less than thirty days, the department shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property. The notice from the department also must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the department shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the department, 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. Upon assessment of costs, the department shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the department under this section may appeal the decision of the department to the district court under chapter 28-32. A hearing by the department as provided for in this section is a prerequisite to an appeal.
5. If the department of water resources, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the department's decision under the terms of this section.
6. If the department of water resources, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded and must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, 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.

**61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction.**

An aggrieved person may appeal an order or decision of a water resource board to the district court of the county in which the land claimed to be affected adversely by the order or decision is located. An appellant shall file an undertaking in the sum of two hundred dollars with any sureties required by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned on the appellant prosecuting the appeal without delay and paying all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. An appeal under this section is governed by the procedure provided in section 28-34-01.

**61-16.1-55. Appeal from decision of water resource board - How to be taken.**

Repealed by S.L. 1989, ch. 83, § 36.

**61-16.1-56. Time for taking appeal from water resource board decision.**

Repealed by S.L. 1989, ch. 83, § 36.

**61-16.1-57. Filing appeal - Docketing and hearing appeals - Final judgment and sending back.**

Repealed by S.L. 1989, ch. 83, § 36.

**61-16.1-58. Attorney general to assist boards - Employment of counsel.**

The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

**61-16.1-59. Proceedings to confirm contracts, special assessments, and other acts.**

Any water resource board, before making any contract, or before levying special assessments, or issuing special assessment warrants, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing special assessment warrants, or leading up to any other special action, shall be judicially examined, approved, and confirmed. Such judicial proceedings shall comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

**61-16.1-59.1. Sinking funds and bonds.**

A water resource board shall establish a sinking fund for each issue of bonds, and the fund must consist of all drain assessments made for the bonds, all warrants funded, all assessments for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys that may be appropriated to the sinking fund. Separate sinking funds must be provided for each separate drain for which bonds have been issued. Until the purpose of the sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose other than payment of the bonds for which the fund was created.

**61-16.1-59.2. Existing obligations and regulations.**

Except as specified, amendments to this chapter do not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts, and all sinking funds created for the payment of these obligations continue in force until the liquidation of the obligations. All valid rules adopted by any board of county commissioners or board of drainage commissioners remain in full force and effect until altered or repealed by the board.

**61-16.1-60. Authorization to organize association of water resource districts.**

1. Water resource districts, organized and established pursuant to this chapter, are authorized upon resolution of the water resource boards to organize and participate in an association of districts.
2. The association or associations authorized hereunder shall be organized pursuant to chapter 10-33.

**61-16.1-61. Water resource districts - Assumption of assets and liabilities of drain boards.**

Beginning on July 1, 1981, each water resource district shall assume all assets, liabilities, and obligations of any county drain board whose territory is included within the boundaries of the district. When the jurisdiction of any county drain board is included within two or more districts, the county auditor shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district, except that special assessment projects and funds, property

interests, and physical assets attached to the land shall be assumed by the district in which the project is located. Property interests and physical assets attached to the land shall be assumed by the district in which they are located. Prior to February 1, 1983, and for review by each affected water resource board, each water resource district and county drain board shall have a certified public accountant prepare a final audit of its financial records, including all special assessment funds and obligations, assets, and other liabilities. All necessary actions to accomplish the transfer of assets and obligations under this section shall be complete prior to January 1, 1982.

**61-16.1-62. Validating organization and acts of water resource districts and county drain boards.**

Nothing contained in this chapter shall be construed as impairing, invalidating, or in any manner affecting the validity of acts or proceedings of water resource districts or county drain boards which existed prior to the passage and approval of this chapter.

**61-16.1-63. Penalty for violation of chapter.**

Any person violating any of the provisions of this chapter shall, if no other criminal penalty is specifically provided, be guilty of a class B misdemeanor.