



North Dakota Legislative Council

Prepared for the Water Drainage Committee
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EXPLANATION OF BILL DRAFT [23.0145.01000] RELATING TO ASSESSMENT PROJECT PROCEDURES AND CALCULATING COSTS AND BENEFITS FOR ASSESSMENT PROJECTS

BILL DRAFT OVERVIEW

Bill draft [23.0145.01000] creates a uniform assessment procedure for all water projects by repealing North Dakota Century Code Chapter 61-21 and amending Chapter 61-16.1, requires a cost-benefit analysis for assessment projects costing \$1 million or more, and addresses conflicts and redundancies between Chapters 61-16.1 and 61-21.

SECTION-BY-SECTION DESCRIPTION

- Section 1 of the bill draft amends Section 61-01-06 to define "waterway."
- Section 2 of the bill draft amends the procedural requirements under Section 61-01-23 for investigating and removing an obstruction to a channel. The definition of "watercourse" was amended to "waterway" to provide a smaller, localized definition of a channel while encompassing the permanent characteristics of a "watercourse." Section 61-01-23 was further amended to clarify the procedural steps an agency or authority must take before entering a landowner's property. Landowners affected by downstream flooding can request assistance from the State Water Commission, water resource district, municipality, or any federal agency involved in flood prevention. The agency or authority is required to provide the landowner with a 30-day notice to remove the obstruction before entering, investigating, and removing the obstruction at the landowner's expense.
- Section 3 of the bill draft amends Section 61-05-02.1, which pertains to the creation and jurisdiction of irrigation districts, by removing a reference to Chapter 61-21, which is repealed by the bill draft.
- Section 4 of the bill draft amends the definitions section of Chapter 61-16.1, which pertains to the operation of water resource districts, to incorporate definitions from the repealed Chapter 61-21, including the definition of "cleaning out and repairing a drain," "drain," and "lateral drain." The section also amends the definitions of "assessment drain," "project," and "water resource board" for clarification and adds new definitions for "affected lands," "assessment project," "benefited property," "benefit," and "practical drainage area" to clarify specific terms for cost-benefit analysis and the area surveyed and examined by an engineer for the construction of an assessment drain.
- Section 5 of the bill draft amends Section 61-16.1-09, pertaining to the powers of a water resource board. Section 61-16.1-09(6) was amended to clarify the board's power to repair and clean out a drain. Section 61-16.1-09(24) was amended to clarify the board's power to establish, deepen, widen, and improve drains. Additional language was added clarifying the power to install artificial subsurface drainage systems under Section 61-16.1-09(25). Language referencing authority under the repealed Chapter 61-21 was removed from Section 61-16.1-09(11).
- Section 6 of the bill draft enacts a new section to Chapter 61-16.1, regarding the acquisition of a right-of-way easement. The language was adopted from the repealed Chapter 61-21 and amended to address proper ownership of easements obtained for assessment projects. Language relating to warrant negotiations from the previous draft was removed.
- Section 7 of the bill draft amends Section 61-16.1-09.1, regarding who can determine benefits to a property. The reference to benefits being determined in accordance with Section 61-16.1-17, based on the engineering report, is replaced with a reference to Section 11 of the bill draft, to clarify the power to assess benefits lies with the water resource board.
- Section 8 of the bill draft amends Section 61-16.1-12.1, which allows a water resource board to enter an agreement with a federal or state agency to construct a project and finance that project with special

assessments. Currently, the board is required to determine and levy assessments against benefited property and prepare the assessment list in accordance with Sections 61-16.1-21 through 61-16.1-24. This language has been amended to require the levy and assessment be determined and the assessment list be prepared in accordance with Section 11 of the bill draft and Sections 61-16.1-22 through 61-16.1-24. Sections 61-16.1-22 through 61-16.1-24 pertain to publication of cost and benefit calculations, the notice of the hearing on assessments, the manner in which assessments may be appealed, and the time when special assessments may be levied.

- Section 9 of the bill draft amends Section 61-16.1-15, which pertains to the process for initiating a project financed through revenue bonds, general taxes, or special assessments. Currently, assessment drain projects are reflected in Chapters 61-21 and 61-16.1. Under Chapter 61-21, landowners may petition to initiate an assessment drain project whereas under Chapter 61-16.1 the water resource board must initiate a project on its own behalf. Section 9 of the bill draft creates a uniform process under Section 61-16.1-15, providing rural and city petitioners the ability to initiate a project. A requirement for landowners to pay petition costs has been included; however, if a project is abandoned, the board may not require the petitioners to pay petition costs. Language referencing water resource board policy and cost-benefit analysis has been removed. Additionally, language requiring the board to only apportion costs of the project to lots, pieces, or parcels of land in proportion to the benefits accruing, and the responsibilities between upstream and downstream landowners regarding surface water management has been removed.
- Section 10 of the bill draft amends Section 61-16.1-17, regarding the procedure for a proposed assessment district. The section is amended to provide notification requirements to landowners. If the board adopts a resolution for construction, the board is required to publish the resolution in the newspaper of general circulation in each area where lands may be affected by the project. Additionally, before an engineer is allowed to enter a landowner's property, the board is required to provide written notice to each landowner at the landowner's address as shown by the tax rolls of the county. The estimated costs prepared by the engineer now cross references Section 11 of the bill draft.
- Section 11 of the bill draft enacts a new section to Chapter 61-16.1, which outlines the procedure for determining costs, benefits, and assessments for assessment projects. The language was adopted from the repealed Section 61-16.1-21 to provide a uniform cost-benefit analysis for assessment projects, and amended to include a requirement to calculate benefits, in dollars, to each lot, piece, or parcel before the hearing on the project under Section 61-16.1-18. The section requires assessment costs be apportioned in relation to the benefits accrued to each lot and requires a cost-benefit analysis and the use of the economic analysis process developed under Section 61-03-21.4 for a proposed project costing \$1 million or more. The section prohibits an individual assessment from exceeding the amount of benefits anticipated to accrue. The board is required to prepare a list identifying the benefits and assessments, in dollars, allocated to each lot and parcel of land for the project, which must be certified by a majority of the members of the board.
- Section 12 of the bill draft amends Section 61-16.1-18, regarding the notice of hearing on assessment projects. The contents of the initial hearing notice to landowners have been amended to include the results, in dollars, of the board's calculations required under Section 11 of the bill draft, and a voting ballot. Currently, boards are required to publish notification in the newspapers of the lands affected by the project, as well as each area in which the landowner resides. This requirement was amended and limited to only require publication in areas where the affected lands are located.
- Section 13 of the bill draft amends Section 61-16.1-19, regarding the process for voting on a proposed project and the publication of the project's voting results. The amendments require water resource boards to advise landowners by publication of the voting results in addition to the landowner's right to appeal, clarify when a vote is timely, and prohibit boards from opening mail-in ballots before the conclusion of the voting period. Additionally, the previous requirement to publish an order establishing or denying a project in the newspaper in the area in which the landowner resides has been removed. The order establishing or denying a project must be published only in the newspaper of general circulation in the area in which the affected lands are located. A cross reference to repealed Section 61-16.1-21 was replaced with a reference to Section 11 of the bill draft.
- Section 14 of the bill draft amends Section 61-16.1-20, regarding the voting rights of landowners. This section was amended for form and style purposes. No substantive changes were made.
- Section 15 of the bill draft amends Section 61-16.1-22, clarifying the notice requirements in connection to Section 61-16.1-18. Currently, notice of the assessment hearing must be published in the newspaper once a week for 3 consecutive weeks and the assessment hearing must be scheduled at least 30 days after the notice is mailed. The amendments change the publication requirement to once a week for 2 consecutive weeks, with the assessment hearing being scheduled within 20 days after notice is mailed. The amendments

also require the notice to include the results, in dollars, of the calculations required under Section 11 of the bill draft and the calculation of costs prepared by the engineer.

- Section 16 of the bill draft amends Section 61-16.1-23, which pertains to appeals to the Department of Water Resources. Currently, landowners have 10 days from the conclusion of the assessment hearing to file an appeal. The statute of limitations for an appeal was amended from 10 to 20 days to provide landowners additional time to review the final assessment list. Language referencing the assessment hearing has been removed, due to assessment lists being finalized at a later date and time. To address the procedural conflict, an appeal must now be made within 20 days after the meeting at which the water resources board approves the final assessment list. The amendments also increase the minimum required threshold of possible votes possessed by a political subdivision before a political subdivision may appeal an assessment from 20 percent of the possible votes to 33 percent of the possible votes. Corrections to assessments made by the department also are subject to the limitations in Section 11 of the bill draft.
- Section 17 of the bill draft amends Section 61-16.1-24 to provide form and style changes. No substantive changes were made.
- Section 18 of the bill draft amends Section 61-16.1-26 to provide form and style changes. No substantive changes were made.
- Section 19 of the bill draft amends Section 61-16.1-27 to provide form and style changes. No substantive changes were made.
- Section 20 of the bill draft amends Section 61-16.1-28 to provide form and style changes. No substantive changes were made.
- Section 21 of the bill draft amends Section 61-16.1-42, regarding drainage construction along or across a public road or railroad. Language was added to clarify the distribution of costs among political subdivisions for constructing, maintaining, and repairing a culvert or bridge. Currently, the board is required to provide notice to the highway authority or railroad authority before constructing a bridge or culvert across a public highway or railroad. Section 21 of the bill draft proposes an additional requirement to solicit guidance from the impacted political subdivision. Because the highway or railroad authority cannot vote on the proposed project, this amendment ensures the political subdivision can afford the costs of construction as well as provides the political subdivision time to review and conform with any highway or railroad guidelines.
- Section 22 of the bill draft amends Section 61-16.1-43, regarding the allocation of costs for construction of bridges and culverts. Amendments made under Section 21 of the bill draft requiring a water resource board to notify and solicit guidance from the political subdivision are mirrored in this section. Amendments to this section also require bridges or culverts to be maintained by the water resource board, unless a previous alternative agreement has been made between the water resource board and the highway authority. An appeal process for a decision of the water resource board under Chapter 28-34 has been included if a request for maintenance submitted by the county or township is denied. Lastly, an amendment requires a county to request federal funding for a project upon a request from the water resource board.
- Section 23 of the bill draft enacts a new section to Chapter 61-16.1, outlining the procedural requirements for requesting a culvert within an assessment area. The new section was adopted from Section 61-21-02.1 and amended to mirror the notice and guidance requirements found in Sections 21 and 22 of the bill draft, as well as the requirements for allocating costs provided under Section 61-16.1-43.
- Section 24 of the bill draft amends Section 61-16.1-51, regarding removal of obstructions to drains, by limiting the applicable drains to "artificial drains" in reference to the notice, hearing, and appeals process for obstructions to a drain. The section also was amended to remove the reference to a watercourse from the definition of "an obstruction to a drain" to mirror amendments made under Section 2 of the bill draft.
- Section 25 of the bill draft makes form and style changes to Section 61-16.1-54, regarding appeals of water resource board decisions to the district court. No substantive changes were made.
- Section 26 of the bill draft enacts a new section to Chapter 61-16.1 relating to mediation services. The new section provides an alternative to appeals to allow an aggrieved person to request assistance from the North Dakota Mediation Service to resolve grievances arising from an order or decision of a water resource board. If the Mediation Service agrees to assist, the water resource board is required to participate in the mediation in good faith.
- Section 27 of the bill draft enacts a new section to Chapter 61-16.1 relating to the designation of a lateral drain. The language in this section was adopted from Section 61-21-01. No substantive changes were made.

- Section 28 of the bill draft enacts a new section to Chapter 61-16.1 relating to letting of contracts. The language in this section was adopted from Section 61-21-24, and amended to mirror the changes made to the final assessment list under Section 11 of the bill draft. A cross reference to Section 61-16.1-22 was replaced with a reference to Section 61-16.1-28, which requires the final assessment list be filed with the county auditor before noticing the time and place where contracts will be let.
- Section 29 of the bill draft enacts a new section to Chapter 61-16.1 relating to contract extensions and reletting. The language in this section was adopted from Section 61-21-26. No substantive changes were made.
- Section 30 of the bill draft enacts a new section to Chapter 61-16.1 relating to the construction or extension of assessment drains through two or more counties. The language in this section was adopted from Section 61-21-34. No substantive changes were made.
- Section 31 of the bill draft enacts a new section to Chapter 61-16.1 relating to drain warrants, terms, and amounts. The language in this section was adopted from Section 61-21-50. No substantive changes were made.
- Section 32 of the bill draft enacts a new section to Chapter 61-16.1 relating to unpaid warrants. The language in this section was adopted from Section 61-21-35. No substantive changes were made.
- Section 33 of the bill draft enacts a new section to Chapter 61-16.1 relating to noncomplying drains. The language in this section was adopted from Section 61-21-67. No substantive changes were made.
- Section 34 of the bill draft enacts a new section to Chapter 61-16.1 relating to the reconveyance of lands no longer required for drainage. The language in this section was adopted from Section 61-21-48. No substantive changes were made.
- Section 35 of the bill draft enacts a new section to Chapter 61-16.1 relating to sinking funds and bonds. The language in this section was adopted from Section 61-21-54. No substantive changes were made.
- Section 36 of the bill draft enacts a new section to Chapter 61-16.1 relating to existing obligations and regulations of county commissioners and drainage boards. This section was adopted from Section 61-21-50. No substantive changes were made.
- Section 37 of the bill draft removes a reference to the repealed Chapter 61-21 from Section 61-32-03.1(4)(g), which pertains to permit requirements for draining subsurface water.
- Section 38 of the bill draft removes a reference to the repealed Chapter 61-21 from Section 61-32-03.2(3), which pertains to subsurface water management systems.
- Section 39 of the bill draft repeals Section 61-16.1-01, which references the legislative intent and purpose of the chapter; Section 61-16.1-21, which provides for assessment of project costs; and Chapter 61-21, which pertains to drainage assessment projects.