

**HOUSE BILL NO. 1095**

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to amend and reenact subsection 4 of section 61-21-01 and section 61-32-08  
2 of the North Dakota Century Code, relating to the definition of drain and administrative hearings  
3 for drainage projects.

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

5 **SECTION 1. AMENDMENT.** Subsection 4 of section 61-21-01 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7 4. "Drain" means any natural watercourse opened, or proposed to be opened, and  
8 improved for the purpose of drainage and any artificial drains of any nature or  
9 description constructed for such the purpose, including dikes and appurtenant works.  
10 This definition may include more than one watercourse or artificial channel constructed  
11 for the aforementioned purpose when the watercourses or channels drain land within a  
12 practical drainage area as determined by the written petition called for in section  
13 61-21-10 and the survey and examination called for in section 61-21-12. The term  
14 includes reducing the capacity of a land feature to retain water.

15 **SECTION 2. AMENDMENT.** Section 61-32-08 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **61-32-08. Appeal of board decisions - State engineer review - Closing of**  
18 **noncomplying drains - Continuing appropriation.**

19 1. The board shall make the decision required by section 61-32-07 within a reasonable  
20 time, but not to exceed one hundred twenty days, after receiving the complaint. The  
21 board shall notify all parties of its decision by certified mail. ~~The~~ Any aggrieved party  
22 may appeal the board's decision ~~may be appealed~~ to the state engineer ~~by any~~  
23 ~~aggrieved party.~~ The appeal to the state engineer must be made within thirty days  
24 from the date notice of the board's decision has been received. If a decision is not

1 made within one hundred twenty days, the appeal to the state engineer must be made  
2 within one hundred fifty days of the complaint. The appeal must be made by  
3 submitting a written notice to the state engineer, which must specifically set forth the  
4 reason why the board's decision is erroneous. The appealing party shall also submit  
5 copies of the written appeal notice to the board and to the nonappealing party. Upon  
6 receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or  
7 ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral  
8 drain, or ditch. The state engineer shall handle the appeal by conducting an  
9 independent investigation and making an independent determination of the matter.  
10 The state engineer may enter property affected by the complaint ~~for the purpose of~~  
11 ~~investigating to~~ investigate the complaint.

12 2. If the board fails to investigate and make a determination concerning the complaint  
13 within a reasonable time, but not to exceed one hundred twenty days, the person filing  
14 the complaint may file ~~sue~~ the complaint with the state engineer. The state engineer  
15 shall, without reference to chapter 28-32, cause the investigation and determination to  
16 be made, either by action against the board, or by ~~personally~~ conducting the  
17 investigation and ~~personally~~ making the determination.

18 3. If the state engineer determines that a drain, lateral drain, or ditch has been opened or  
19 established by a landowner or tenant contrary to title 61 or any rules adopted by the  
20 board, the state engineer shall take one of three actions:

21 4. a. Notify the landowner by certified mail at the landowner's post-office address of  
22 record;

23 2. b. Return the matter to the jurisdiction of the board along with the investigation  
24 report; or

25 3. c. Forward the drainage complaint and investigation report to the state's attorney.

26 4. If the state engineer decides to notify the landowner, the notice must specify the  
27 nature and extent of the noncompliance and ~~must~~ state that if the drain, lateral drain,  
28 or ditch is not closed or filled within ~~such a~~ reasonable time as determined by the state  
29 engineer ~~shall determine~~, but not less than thirty days, the state engineer shall procure  
30 the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~,  
31 against the property of the landowner responsible. The notice from the state engineer

1 must state that the affected landowner may, within fifteen days of the date the notice is  
2 mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the  
3 state engineer shall set a hearing date within fifteen days from the date the demand is  
4 received. If, in the opinion of the state engineer, more than one landowner or tenant  
5 has been responsible, the costs may be assessed on a pro rata basis in proportion to  
6 the responsibility of the landowners. Upon assessment of costs, the state engineer  
7 shall certify the assessment to the county auditor of the county where the  
8 noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend  
9 the assessment against the property assessed. Each assessment must be collected  
10 and paid as other taxes are collected and paid. Assessments collected must be  
11 deposited with the state treasurer and are hereby appropriated out of the state  
12 treasury and must be credited to the contract fund established by section 61-02-64.1.  
13 Any person aggrieved by action of the state engineer under the provisions of this  
14 section may appeal the decision of the state engineer to the district court in  
15 accordance with ~~under~~ chapter 28-32. A hearing by the state engineer as provided for  
16 in this section shall be a prerequisite to such an appeal.

17 6. If the state engineer, after completing the investigation required under this section,  
18 decides to return the matter to the board, a complete copy of the investigation report  
19 shall be forwarded to the board and it shall include the nature and extent of the  
20 noncompliance. Upon having the matter returned to its jurisdiction, the board shall  
21 carry out the state engineer's decision in accordance with ~~under~~ the terms of this  
22 section.

23 7. If the state engineer, after completing the investigation required under this section,  
24 decides to forward the drainage complaint to the state's attorney, a complete copy of  
25 the investigation report must also be forwarded, which must include the nature and  
26 extent of the noncompliance. The state's attorney shall prosecute the complaint in  
27 accordance with ~~under~~ the statutory responsibilities prescribed in chapter 11-16.

28 8. In addition to the penalty imposed by the court in the event of ~~on~~ conviction under this  
29 statute, the court shall order the drain, lateral drain, or ditch closed or filled within  
30 such a reasonable time period as the court determines, but not less than thirty days. If  
31 the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the

1 court, the court shall procure the closing or filling of the drain, lateral drain, or ditch,  
2 and assess the cost thereof against the property of the landowner responsible, in the  
3 same manner as other assessments under chapter 61-16.1 are levied. If, in the  
4 opinion of the court, more than one landowner or tenant has been responsible, the  
5 costs may be assessed on a pro rata basis in proportion to the responsibility of the  
6 landowners.