

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Amendment to: HB 1097

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Although this bill repeals section 61-03-05, Fees of state engineer, the fees that are being collected are addressed in the State's open records laws. This bill has no fiscal impact.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

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- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: (701) 328-2750

Date Prepared: 12/24/2014

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: HB 1097

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Telephone: (701) 328-2750

Date Prepared: 12/24/2014

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1097

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1097
1/15/2015
Job # 22042

- Subcommittee
 Conference Committee

Committee Clerk Signature *Kenneth M. Tubek*

Explanation or reason for introduction of bill/resolution:

Relating to fees of the state engineer

Minutes:

Attachments #1

Chairman Porter opens hearing on HB 1097.

John Paczkowski, Chief-Regulatory Section, Office of the State Engineer/State Water Commission

I am here in support of HB 1097, along with the proposed attached amendments. The attached proposed amendments to HB1097 recapture the grammatical intent of the State Engineer's original pre-filed bill.

Attachment #1

Rep. George Keiser: On page 1 line 13, Has the state engineer always operated this way? Most language doesn't read "within 30 days," it says "within 30 days of knowing or should have known" that your action was contemplated. With 30 days, somebody's a snowbird, they go South, they don't get to know it. 30 days gives you a lot of power without much responsibility to inform the impacted folks about your actions.

John: Prior to this proposed amendment, we did not have a time limitation there. The idea here is to set up a limitation by which those who are aggrieved can respond. Whether or not there is better language is up for consideration.

Rep. George Keiser: If 30 days pass, there's no recourse. And if they didn't know about it for whatever reason, you have no responsibility to inform the potentially impacted folks. Typically, that's not the way we do it.

John: You're right. Someone could be gone, but in this case, the appeals sent to the State Engineer, arguably the aggrieved party is most likely the one who sent the appeal to the State Engineer. They will, in fact, receive an official notification letter that says "here's what

the decision is of the State Engineer." So the likelihood that they're not going to be made aware of it, I think, is fairly minimal. But we're open to consideration.

Rep. George Keiser: Then there really is no problem putting that additional language in?

John: No, sir.

Rep. Curt Hofstad: In Section 3. How is this going to affect the owners? Prior to now, how did the State Engineer handle this? And how many dams will be required to be done by the owners?

John: Under the current language, it states that the holding capacity of the reservoir needs to exceed 1000 acre feet of water before an Emergency Action Plan is required. It doesn't dictate whether it's a high-hazard dam or a large structure out in the middle of miles of pasture. Arguably, that dam out in the middle of the pasture, it's a low-hazard structure. If these medium or high-hazard dams do fail, they have the potential for loss of life. Perhaps, rather than the capacity being the trigger, it's the hazard class that would trigger that need for an EAP. Is an EAP going to cost money? Yes, it is, but I believe the Commission cost-share policy is that we provide for 80 percent of the cost of the EAP.

Rep. Curt Hofstad: What I'm interested in is: how many owners are going to get a notice saying they now have to have an emergency action plan?

Karen Gaff(sp?): Currently there are three high-hazard dams in the state that are less than 1000 acre-feet that do not currently require an EAP. If they did fail, there is the potential for loss of life downstream. They would be required to have an EAP. There are also 35 dams that are medium-hazard dams that are under 1000 acre-feet. They would also be required under this bill to have EAPs. There are about 100 dams that are classified as low-hazard dams but are more than 1000 acre-feet. By the current law, they should have an EAP. But there's really no consequences if those dams fail. So this would alleviate that requirement for those dams.

Rep. Curt Hofstad: So we're talking about 38 communities that will be required to come up with a plan?

Karen: Currently, I think there's 35 dams, and that number could change. We review those classifications, and that could change. Some of those dams are owned by private individuals, and some are government-entities... communities, water resource boards.

Chairman Porter: Going back to John P about the repealer. The fees. Where are those fees and charges currently being assessed for various services going to be picked up at? You aren't just going to drop everything and do this for free. What you're telling us is that we're going to repeal this and you're going to adopt a fee schedule internally and do it without us?

John: No that's not the intent. Actually, what's taken place, a lot of these activities, the Water Commission does within their budget. If it's excessive-like 20 pages-then we can

charge for it. Those charges have not been assessed in the past, for the most part. And so, there is no intent to set up our own fee schedule outside of the authority provided by the Legislature. It's mostly done on a gratis basis.

NO OPPOSITION

Chairman Porter: The committee would like to see an amendment presented from you regarding page 1, line 13, that talks about "within 30 days of discovery". Something along that line, so it's not "30 days of the action or decision." You can work directly with Rep. Keiser for the language, if you have questions.

Closed

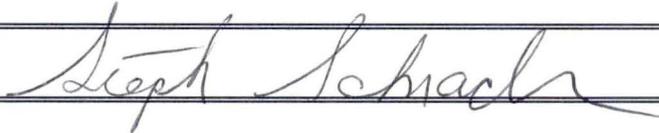
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

1097
1/22/2015
22395

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the effect of pending administrative actions on permits and emergency action plans for dams.

Minutes:

Attachments # 0

Chairman Porter: opens hearing.

Chairman Porter: The intern incorporated the language from the Water Commission's proposed amendments and addressed Rep. George Keiser concerns.

Rep. George Keiser: I move to pass the amendment as distributed.

Rep. Curt Hofstad: Seconds motion.

Chairman Porter: The proposed amendment is a collaboration between what the Water Commission had presented and it includes the language on page 1, line 13 "after the aggrieved person knew or should have reasonably known."

Voice Vote: Motion carries unanimously. Yes 12, No 0, Absent 1.

Chairman Porter: We have an amended Bill in front of us.

Rep. George Keiser: I move a do pass on HB 1097 as amended.

Rep. Curt Hofstad: Second

Chairman Porter: Asks for discussion. No discussion. Takes vote on Bill as amended.

Vote: Yes 11, No 0, Absent 2.

Rep. Curt Hofstad: Carrier

January 22, 2015



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1097

Page 1, line 12, replace "aggrieved person" with "state engineer"

Page 1, line 12, after "must" insert "receive the"

Page 1, line 12, after "request" insert "for"

Page 1, line 13, after "days" insert "after the aggrieved person knew or should have reasonably known"

Page 2, line 1, after the first "applicant" insert "is"

Renumber accordingly

Date: 1-22-15
Roll Call Vote #:

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

House Energy and Natural Resources Committee

LC 15.8017.01001

Subcommittee

1097

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep. Keiser Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Bob Hunsakor		
Vice Chairman Damschen			Rep. Corey Mock		
Rep. Dick Anderson			Rep. Naomi Muscha		
Rep. Roger Brabandt					
Rep. Bill Devlin					
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. George Keiser					
Rep. Mike Lefor					
Rep. Mike Nathe					

Voice Vote

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Hofstad

If the vote is on an amendment, briefly indicate intent:

Water Commission's proposed amendments.

Date: 1-22-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House Energy and Natural Resources Committee

Subcommittee
1097

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Keiser Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Damschen	✓		Rep. Corey Mock	✓	
Rep. Dick Anderson	✓		Rep. Naomi Muscha	✓	
Rep. Roger Brabandt	✓				
Rep. Bill Devlin	✓				
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. George Keiser	✓				
Rep. Mike Lefor	✓				
Rep. Mike Nathe		A			

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Hofstad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1097: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1097 was placed
on the Sixth order on the calendar.

Page 1, line 12, replace "aggrieved person" with "state engineer"

Page 1, line 12, after "must" insert "receive the"

Page 1, line 12, after "request" insert "for"

Page 1, line 13, after "days" insert "after the aggrieved person knew or should have
reasonably known"

Page 2, line 1, after the first "applicant" insert "is"

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1097

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1097
3/12/2015
24722

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the effect of pending administrative actions on permits and emergency action plans for dams; relating to appeals from an action or decision of the state engineer; relating to fees of the state engineer

Minutes:

1 Attachment

Chairman Schaible called the committee to order, opened the hearing on HB 1097.

John Paczkowski: State Water Commission, in support of 1097. Creating 2 new sections of the code and repeal one section. See attachment #1. (.35-5:10)

Senator Murphy: Who the owners of dams are?

John Paczkowski: Larger dams are built by the Corps of Engineers or NRCS after they are built they are turned over to the local water resource districts. We have, according to dam safety, 44 high hazard dams in the state and 90 medium hazard dams, all but 5 of the high hazard dams already have emergency action plans. 3 of the 5 that don't are because they fall below the 1,000 acre per foot reservoir capacity threshold; they are still determined to be high hazard but they have a loss of a number of lives. 43 of the median hazard dams have EAPs, 36 of those falls below the threshold. Loss of life can occur as well. Water resource districts have the majority of responsibility of those operations.

Senator Murphy: By that definition, if a downstream community grows significantly then you would move it up to high hazard?

John Paczkowski: Yes, the water commission will we look at the hazard classification of dams.

Chairman Schaible then closed the public hearing on HB 1097.

Senator Murphy Moved a do pass, second by Senator Armstrong, roll was taken, the motion passed 7-0-0 with Senator Murphy carrying the bill to the floor.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1097**

Senate Energy and Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Murphy Seconded By Senator Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	X		Senator Murphy	X	
Vice Chair Unruh	X		Senator Triplett	X	
Senator Armstrong	X				
Senator Hogue	X				
Senator Laffen	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1097, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1097 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1097

#1

TESTIMONY ON HOUSE BILL NO. 1097

House Energy and Natural Resources Committee

**John Paczkowski, Chief - Regulatory Section
Office of the State Engineer/State Water Commission**

January 15, 2015

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Chief of the Regulatory Section for the Office of the State Engineer/State Water Commission. On behalf of State Engineer Todd Sando, I am here in support of House Bill No. 1097, with proposed amendments as attached, which would amend N.D.C.C. § 61-03-22, create two new sections to N.D.C.C. chapter 61-03, and repeal N.D.C.C. § 61-03-05.

The attached proposed amendments to House Bill No. 1097 recapture the grammatical intent of the State Engineer's original prefiled bill. With the incorporated amendments, the paragraph reads:

Any person aggrieved by an action or decision of the state engineer under this title has the right to a hearing. The state engineer must receive the request for hearing within thirty days of the action or decision. Once a hearing has been held or if the hearing request is denied, the person aggrieved has the right to petition for reconsideration or appeal under chapter 28-32.

The amendments to N.D.C.C. 61-03-22 seek to more clearly explain the process of requesting a hearing of the State Engineer for an action or decision of the State Engineer. The amendments specify a timeframe by which a hearing request must be received by the State Engineer to be valid. The amendments also further clarify who may submit a hearing request. Additionally, the amendments to N.D.C.C. 61-03-22 allow the person aggrieved to petition for reconsideration or appeal if the hearing request is denied and no hearing is held.

The first new section to N.D.C.C. chapter 61-03 proposed would outline how the State Engineer would process permit applications if pending complaints or administrative orders are outstanding under N.D.C.C. title 61. The permit application will not be processed until outstanding issues are resolved. If the permit application resolves the outstanding issues, the State Engineer may allow processing. This new section is necessary due to situations where a State Engineer administrative order was pending and the subject of the administrative order filed a permit application with the State Engineer. Review of existing N.D.C.C. chapter 61-03 language did not provide explicit direction for appropriate agency operations.

The second new section to N.D.C.C. chapter 61-03 proposed would require emergency action plans for medium and high-hazard dams, as determined by the State Engineer. The *North Dakota Dam Design Handbook* defines medium and high-hazard dams as follows:

Medium - dams located in predominantly rural or agricultural areas where failure may damage isolated homes, main highways, railroads or cause interruption of minor public utilities. The potential for the loss of a few lives may be expected if the dam fails.

High - dams located upstream of developed and urban areas where failure may cause serious damage to homes, industrial and commercial buildings and major public utilities. There is a potential for the loss of more than few lives if the dam fails.

As described above, medium and high-hazard dams have the potential for loss of life if the dams were to fail. To mitigate the potential for loss of life, to the maximum practicable extent possible, emergency action plans and updates must be submitted to the state engineer for review and approval. The Association of State Dam Safety Officials and the National Dam Safety Review Board recognize that having an effective emergency action plan is critical to reducing the loss of life and property damage from dam failures. Existing Century Code limits the jurisdiction of the State Engineer to require emergency action plans based upon the dam reservoir capacity, with no consideration of the hazard classification of the dam. The proposed changes to N.D.C.C. chapter 61-03 would expand the jurisdiction of the State Engineer to require emergency action plans to capture those dams that have a medium or high-hazard classification, but have a reservoir capacity less than the current jurisdictional limit.

Repealing N.D.C.C. 61-03-05 follows the internal policy where the State Engineer no longer requires the fees identified. A significant contributor to the repeal of this section is the proliferation of technology and the ability to cost-effectively transmit data to requesting parties. Additionally, the repeal of N.D.C.C. 61-03-05 recognizes that the majority of the examples identified have been incorporated into the normal operations of the agency.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1097

Page 1, line 12, after "~~by the~~" insert ". The"

Page 1, line 12, remove the overstrike over "~~state engineer~~"

Page 1, line 12, remove ". The aggrieved person"

Page 1, line 12, after "must" insert "receive the"

Page 1, line 12, replace "a" with "for"

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Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: (701) 328-2750

Date Prepared: 12/24/2014

TESTIMONY ON HOUSE BILL NO. 1097

1.1

Senate Energy and Natural Resources Committee

John Paczkowski, Chief - Regulatory Section
Office of the State Engineer/State Water Commission

March 12, 2015

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