

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1076

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1076
1/12/2023

relating to the Department of Water Resources' authority regarding water permit thresholds for dikes, dams, and other devices

10:06 AM Chairman Heinert opened the hearing. Members present: Chairman Heinert, Vice Chairman Schreiber-Beck, Representatives Conmy, Dyk, Hager, Hauck, Heilman, Hoverson, Jonas, Longmuir, Marschall, Murphy, Novak, and Timmons.

Discussion Topics:

- Construction permits
- Permitting thresholds
- Complaint process
- Mitigation timeline

Testimony in favor:

Aaron Carranza, Regulatory Division Director, ND DWR, Testimony #12972, 12973, 12974,

Additional written testimony:

Phil Murphy, NDSGA, Testimony #12898

Jack Dwyer, Exec Secretary ND Water Resource District Association, Testimony #13026

Rep Hagert moved a Do Pass on HB 1076, seconded by Rep Marschall.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	Y
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

Yes 14 No 0 Absent 0 Rep Hagert is carrier.

10:21 AM Chairman Porter closed the meeting.

Kathleen Davis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1076: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB
1076 was placed on the Eleventh order on the calendar.

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1076

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1076
3/2/2023

A bill relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.

10:30 AM Chairman Patten opened the meeting.
Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Construction
- Applications
- Complaints
- Water resource districts
- Protected areas
- Engineer designers

10:31 AM Aaron Carranza, Director of Regulatory Division, North Dakota Water Resources Department, introduced the bill #21644, 21697.

10:36 AM Jack Dwyer, Executive Secretary of the North Dakota Water Resource Districts Association, testified in favor of the bill and provided written testimony #21526.

10:38 AM Chairman Patten closed the public hearing.

10:39 AM Senator Magrum moved to Do Pass the bill. Motion seconded by Senator Boehm.

10:39 AM roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Magrum will carry the bill.

This bill does not affect workforce development.

10:40 AM Chairman Patten closed the meeting.

- Note this bill was reconsidered at a later meeting.

Senate Energy and Natural Resources Committee
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Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1076
3/2/2023

A bill relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.
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11:14 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kannianen, Beard, Boehm and Magrum are present.
Senator Kessel is absent.

Discussion Topics:

- Committee action

11:15 AM Senator Magrum moves to reconsider the action previously taken on the bill.
Motion is seconded by Senator Beard.

11:15 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	AB

The motion passes 5-0-1.

11:16 AM Chairman Patten closed the meeting

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1076
3/17/2023

A bill relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.
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9:08 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Boehm, Beard and Kessel are present. Senators Magrum and Kannianen are absent.

Discussion Topics:

- Committee action

9:09 AM The committee has discussion on the bill.

9:10 AM Senator Beard moved to Do Pass the bill. Senator Boehm seconded the motion.

9:10 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	AB
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	AB
Senator Greg Kessel	Y

Motion passes 4-0-2.

Senator Magrum will carry the bill.

This bill does not affect workforce development.

9:10 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1076: Energy and Natural Resources Committee (Sen. Patten, Chairman)
recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB
1076 was placed on the Fourteenth order on the calendar. This bill does not affect
workforce development.

TESTIMONY

HB 1076

In Favor of 1076

My name is Phil Murphy representing the ND Soybean Growers Association. We perceive 1076 as being deregulatory in nature and believe that moving the requirement for a permit from 50 to 80 acre feet can be met responsibly. Thank you for your favorable consideration.

Testimony
House Bill 1076 – Department of Water Resources
House Energy and Natural Resources Committee
Representative Todd Porter, Chairman
January 12, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee – I am Aaron Carranza, Regulatory Division Director of the Department of Water Resources (Department). I am here today to provide you an overview of the House Bill No. 1076, which proposes to amend portions of North Dakota Century Code section 61-16.1-38, relating to the Department’s authority over permitting requirements for dikes. This bill is part of the governor’s overall red-tape reduction initiative by proposing to remove unnecessary application requirements.

North Dakota Century Code section 61-16.1-38, often referred to as the Department’s construction permit statute, requires a permit for the construction or modification of a dam, dike, or other device. Applications for these permits, as well as complaints related to these structures, are reviewed by both the Department and county water resource districts. In recent years, the Department has identified a few areas within this statute that may be opportunities to deregulate and add clarity. Specifically, those areas are:

1. The permit threshold for a dike or levee is very technical to calculate for permit applicants; and
2. The permit requirements for all dikes are generally the same given the construction permit statute does not differentiate regulation between dike types.

In other words, the current statute is best described as a “one-size-fits-all” approach, which makes it difficult for the Department to differentiate permitting requirements between different types of dike systems, such as dikes in the City of Fargo versus an agricultural edge-of-field dike, for example.

Additionally, the current statute's permitting threshold for all dikes is based upon a "volume protected" approach, which is difficult for potential applicants and the general public to understand given it is not easily quantifiable by non-technical persons.

The Department seeks to resolve these problem areas by creating a tiered regulatory framework for dikes. Such a tiered framework would base minimum permit application requirements upon what the dike is protecting, not a specified volume. To accomplish this, the Department proposes some deregulation of agricultural dikes and farmstead ring dikes. This creates more equity for agricultural producers and rural property owners' dikes given those dike systems have fewer public safety considerations. House Bill 1076 does this by:

1. Eliminating the requirement for a professional engineer for the construction of an agricultural dike or farmstead ring dike;
2. Increasing the threshold for requiring a construction permit for an agricultural dike; and
3. Requiring construction permits for construction of municipal dikes if they are protecting residences or occupied structures, without respect to a volume protected.

Specifically, House Bill 1076 will eliminate the current "volume protected" or "one-size-fits-all" permitting threshold of 50 acre-feet or more for all dikes and replace it with a targeted "80 acres or more protected area" permitting threshold for agricultural dikes only. House Bill 1076 will also lessen the requirement for engineering services by eliminating the current requirement for a professional engineer to design agricultural dikes and farmstead ring dikes.

House Bill 1076 will harvest the time savings from the above deregulations to prioritize the review of applications for dikes that are intended to protect people or public infrastructure.

There are no proposed changes to the existing construction permit process with House Bill 1076, but if successful, these proposed changes to the construction permit statute will afford the Department the ability to better target permitting requirements for dikes based upon public safety and water management considerations. House Bill 1076 does not propose to amend the permit thresholds for dams.

The Department believes these changes will make the permitting process for dikes more transparent for the general public and will also help Department staff and county water resource districts more equitably regulate dikes with respect to public safety and water management considerations.

If you wish to know how our agency would adopt definitions regarding agricultural dikes, farmstead ring dikes, or farmsteads, I provided a document that includes draft definitions based upon existing definitions in North Dakota Administrative Code chapters 89-05-01 and 89-08-01. The Department's intent would be to codify these definitions in Administrative Code if House Bill 1076 is successful. I also included a flow-chart that depicts how the permitting requirements would be determined under this proposal.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

DRAFT DEFINITIONS



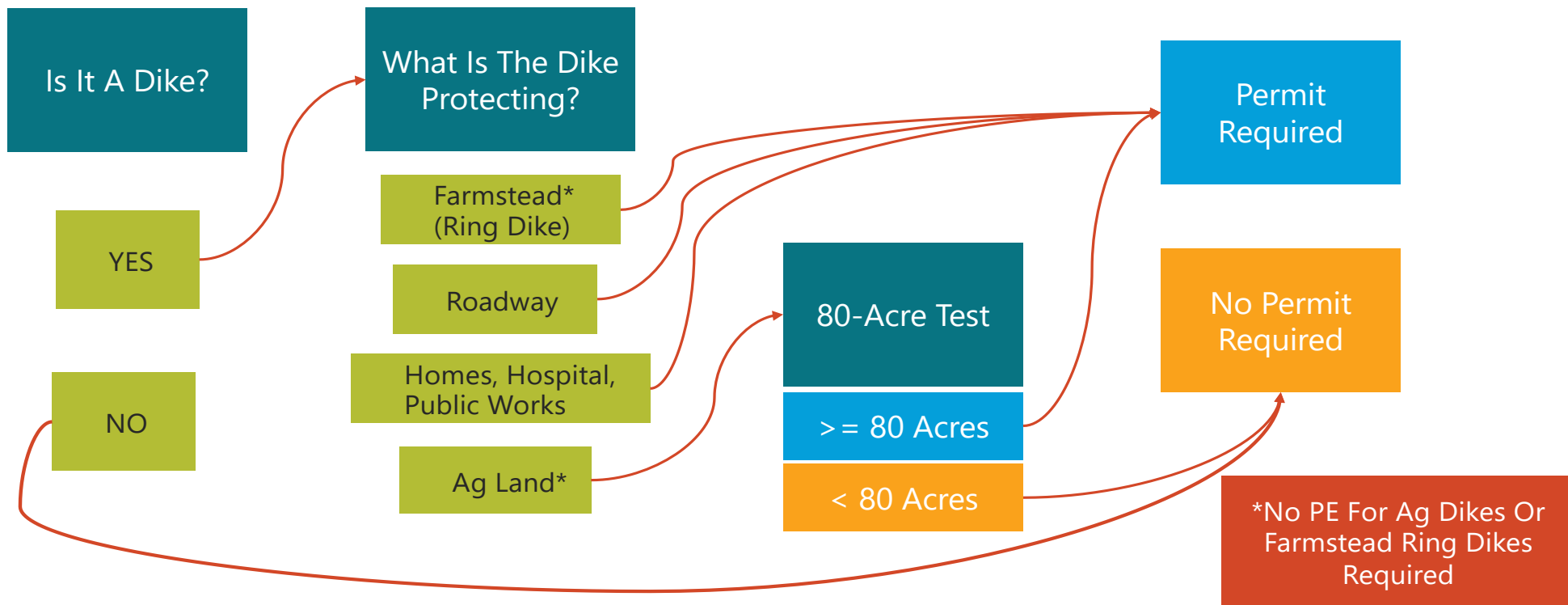
"Agricultural dike" means a dike protecting only agricultural land.

"Farmstead" means an individual, rural, or farm property including a dwelling or associated buildings and up to five (5) acres of land .

"Farmstead ring dike" means a dike enclosing and protecting a farmstead.

DRAFT FLOW CHART

IS A PERMIT REQUIRED? → Would Be A 2- To 3-Step Test





North Dakota
Water Resource
Districts Association

JACK P. DWYER, EXECUTIVE SECRETARY
701-730-5469 (c) • jack@ndwaterlaw.com
P.O. Box 2254 • Bismarck, North Dakota 58502
701-223-4615 (o) • staff@ndwater.net

January 12, 2023

Dear Chairman Porter and House Energy and Natural Resources Association:

My name is Jack Dwyer and I serve as the Executive Secretary of the North Dakota Water Resource Districts Association. Our membership has considered HB 1076, and supports the Department of Water Resources' efforts to reduce red tape for these small projects. The NDWRDA together with the North Dakota Water Users and Irrigation Association adopted the following resolution in support of HB 1076:

DRAINAGE REGULATION. We support water resource districts' authority to manage and regulate tile, subsurface, and surface drainage to ensure responsible watershed management and to protect downstream communities, landowners, and infrastructure. We support managed drainage as critical for the agricultural economy in North Dakota; for protection of public infrastructure; and for the benefit of all landowners and residents of North Dakota. We support an exception to volumetric construction permit thresholds for dikes that are exclusively agricultural in nature.

Thank you for your consideration, and the NWDRWA encourages you to issue a DO PASS recommendation regarding HB 1076.

Sincerely,

Jack Dwyer



North Dakota
Water Resource
Districts Association

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March 2, 2023

Dear Chairman Patten and Senate Energy and Natural Resources Committee:

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Sincerely,

Jack Dwyer

Testimony
House Bill 1076 – Department of Water Resources
Senate Energy and Natural Resources Committee
Senator Dale Patten, Chairman
March 2, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee – I am Aaron Carranza, Regulatory Division Director of the Department of Water Resources (Department). I am here today to provide you an overview of House Bill No. 1076, which proposes to amend portions of North Dakota Century Code section 61-16.1-38, relating to the Department’s authority over permitting requirements for dikes. This bill is part of the governor’s overall red-tape reduction initiative by proposing to remove unnecessary application requirements.

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