

WATERS

CHAPTER 471

HOUSE BILL NO. 1097

(Energy and Natural Resources Committee)
(At the request of the State Engineer)

AN ACT to create and enact two new sections to chapter 61-03 of the North Dakota Century code, relating to the effect of pending administrative actions on permits and emergency action plans for dams; to amend and reenact section 61-03-22 of the North Dakota Century Code, relating to appeals from an action or decision of the state engineer; and to repeal section 61-03-05 of the North Dakota Century Code, relating to fees of the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-03-22 of the North Dakota Century Code is amended and reenacted as follows:

61-03-22. Hearing - Appeals from decision of state engineer.

~~Except as more specifically provided in this title, any~~Any person aggrieved because of ~~any~~by an action or decision of the state engineer under the provisions of this title has the right to a hearing by the state engineer if ~~no~~. The state engineer must receive the request for a hearing on the matter resulting in within thirty days after the aggrieved person knew or should have reasonably known of the action or decision has been held. IfOnce a hearing has been held or if the hearing request is denied, the person aggrieved has the right to petition for reconsideration and ~~to~~ appeal, ~~all in accordance with the provisions of~~ under chapter 28-32.

SECTION 2. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Pending administrative actions and permits.

If an applicant for any permit processed by the state engineer has an unresolved administrative order or complaint under this title, the permit will not be processed until the order is complied with or complaint is resolved. At the state engineer's discretion, the permit may be processed if issuing the permit would resolve the administrative order or complaint. If an applicant is not an individual, this section applies if the applicant is at least twenty-five percent owned by an individual with an unresolved administrative order or complaint under this title.

SECTION 3. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Emergency action plan - High-hazard or medium-hazard dam.

The owner of a high-hazard or medium-hazard dam shall develop, periodically test, and update an emergency action plan to be implemented if there is an

emergency involving the dam. The emergency action plan and any subsequent updates must be submitted to the state engineer for approval.

SECTION 4. REPEAL. Section 61-03-05 of the North Dakota Century Code is repealed.

Approved March 23, 2015

Filed March 23, 2015

CHAPTER 472

HOUSE BILL NO. 1096

(Energy and Natural Resources Committee)
(At the request of the State Engineer)

AN ACT to amend and reenact subsection 4 of section 61-04-01.1, sections 61-04-06.2, 61-04-09, and 61-04-31, and subdivision i of subsection 2 of section 61-04.1-16 of the North Dakota Century Code, relating to the definition of domestic water use, the term and inspection of a water permit, reservation of waters, and weather modification permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4. "Domestic use" means the use of water by ~~an individual, or by at least one~~ family unit; or household; ~~obtaining water from the same system~~ for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area ~~for each family unit or household for noncommercial~~ gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, ~~when the water is supplied by the individual or family unit.~~ Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.

SECTION 2. AMENDMENT. Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06.2. Terms of permit.

The state engineer may issue a conditional permit for less than the amount of water requested, ~~but in no case may.~~ Except for water permits for incorporated municipalities or rural water systems, the state engineer may not issue a permit for more water than can be beneficially used for the purposes stated in the application ~~except that water.~~ Water permits for incorporated municipalities or rural water systems may contain water in excess of present needs if based upon reasonable projections of what may reasonably be necessary for the future water needs requirements of the municipality or the rural water system. The state engineer may require modification of the plans and specifications for the appropriation. The state engineer may issue a permit subject to fees for water use, terms, and conditions, restrictions, limitations, and termination dates the state engineer considers necessary to protect the rights of others and the public interest. Conditions and limitations so attached must be related to matters within the state engineer's jurisdiction ~~of the state engineer; provided, however, that all.~~ All conditions attached to any permit issued ~~prior to~~ before July 1, 1975, are binding upon the permittee.

SECTION 3. AMENDMENT. Section 61-04-09 of the North Dakota Century Code is amended and reenacted as follows:

61-04-09. Application to beneficial use - Inspection - Perfected water permit.

~~On or before the date set for the application of the water to a~~After the permit's beneficial use date, or upon notice from the owner~~permitholder~~ that water has been applied to a beneficial use, the state engineer shall ~~causenotify the conditional water permitholder and inspect~~ the works to be inspected, after due notice to the holder of the conditional water permit. ~~Such. The inspection shall be thorough and complete, in order to~~must determine the safety, efficiency, and actual capacity of the works, ~~its safety, and efficiency.~~ If the works are not properly and safely constructed, the state engineer may require the necessary changes to be made within such time ~~as the state engineer deems~~a reasonable and shall not issue a perfected water permit until such changes are made~~time~~. Failure to make the changes within the time prescribed by the state engineer shall cause postponement of the ~~permit's~~ priority ~~under the water permit~~date to the date the changes are actually made to the satisfaction of the state engineer, ~~and any.~~ Any intervening application submitted prior ~~to~~before the date the changes are actually made ~~may~~will have the benefit of such~~the~~ postponement of priority. When the works are found ~~in satisfactory condition, after inspection~~properly and safely constructed and inspected, the state engineer shall issue the perfected water permit, setting forth the actual capacity of the works and ~~such~~the limitations or conditions upon the water permit as stated in the conditional water permit as authorized by section 61-04-06.2; ~~provided, however, that all.~~ All conditions attached to any permit issued prior ~~to~~before July 1, 1975, shall ~~bear~~be binding upon the permittee.

SECTION 4. AMENDMENT. Section 61-04-31 of the North Dakota Century Code is amended and reenacted as follows:

61-04-31. Reservation of waters - Public hearing - Notice.

1. Whenever it appears necessary to the state engineer, or when so directed by the commission, the state engineer may by regulation:
 - a. Reserve reserve and set aside waters for beneficial utilization~~use~~ in the future; and
 - b. ~~When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.~~
2. ~~a.~~ a. Prior ~~to~~Before the adoption of a regulation under this section, the state engineer shall conduct a public hearing in each county ~~in which~~where waters relating to the regulation are located. ~~The~~At least seven days before the date set for the public hearing shall be preceded by, a notice placed in a newspaper of general circulationmust be published in the official county newspapers within each of the counties.
3. ~~b.~~ b. Regulations adopted hereunder shall ~~bear~~be subject to chapter 28-32.
2. When sufficient information or data is lacking to allow for sound decisionmaking on a water permit application, the state engineer may withdraw various waters of the state from additional appropriations until sufficient data or information is available. Water permit applications pending from these sources will be placed in a deferred status.

SECTION 5. AMENDMENT. Subdivision i of subsection 2 of section 61-04.1-16 of the North Dakota Century Code is amended and reenacted as follows:

- i. The applicant has registered, with the North Dakota aeronautics commission, any aircraft ~~and pilots~~ intended to be used in connection with the operation.

Approved March 31, 2015
Filed March 31, 2015

CHAPTER 473

HOUSE BILL NO. 1095

(Energy and Natural Resources Committee)
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-16.1-53.1, subsection 4 of section 61-21-01, and section 61-32-08 of the North Dakota Century Code, relating to administrative hearings for noncomplying dams, dikes, and other devices, the definition of drain, and administrative hearings for drainage projects; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-53.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53.1. Appeal of board decisions - State engineer 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. ~~The Any aggrieved party may appeal the board's decision may be appealed to the state engineer by any aggrieved party.~~ The appeal to the state engineer 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 state engineer, which must specifically set forth the reason why ~~the appealing party~~ believes the board's decision is erroneous. The appealing party shall also 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 state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint ~~for the purpose of investigating 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 state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, ~~shall~~ cause the investigation and determination to be made, either by action against the board; or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.
3. If the state engineer determines that 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 state engineer shall take one of these three actions:

1. a. Notify the landowner by certified mail at the landowner's post-office address of record;
 2. b. Return the matter to the jurisdiction of the board along with the investigation report; or
 3. c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must~~ state that if the dam, dike, or other device is not removed within ~~such~~ a reasonable time as determined by the state engineer ~~determines~~, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property of ~~the responsible landowner~~. The notice from the state engineer 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 state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, 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 state engineer 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 ~~are hereby appropriated out of the state treasury and must be~~ credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court ~~in accordance with~~ under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to ~~such~~ an appeal.
5. If the state engineer, 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 it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision ~~in accordance with~~ under the terms of this section.
6. If the state engineer, 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, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint ~~in accordance with~~ under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court ~~in the event of~~ on conviction under this statute, the court shall order the dam, dike, or other device removed within ~~such~~ 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 ~~thereof~~ 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.

SECTION 2. AMENDMENT. Subsection 4 of section 61-21-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. AMENDMENT. Section 61-32-08 of the North Dakota Century Code is amended and reenacted as follows:

61-32-08. Appeal of board decisions - State engineer review - Closing of noncomplying drains.

1. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. ~~The Any aggrieved party may appeal the board's decision may be appealed to the state engineer by any aggrieved party.~~ The appeal to the state engineer 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 state engineer, which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to ~~the all nonappealing party parties.~~ Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint ~~for the purpose of investigating to investigate~~ the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file ~~sue the~~ the complaint with the state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board; or by ~~personally~~ conducting the investigation and ~~personally~~ making the determination.
3. If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:
 4. a. Notify the landowner by certified mail at the landowner's post-office address of record;

2. ~~b.~~ Return the matter to the jurisdiction of the board along with the investigation report; or
3. ~~c.~~ Forward the drainage complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and ~~must state that if the drain, lateral drain, or ditch is not closed or filled within such a reasonable time as determined by the state engineer shall determine, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, against the responsible landowner's property of the landowner responsible.~~ The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand; in writing; a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, 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 state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch 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 ~~are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1.~~ Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court ~~in accordance with~~ under chapter 28-32. A hearing by the state engineer as provided for in this section ~~shall be~~ a prerequisite to ~~such~~ an appeal.
5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report ~~shall~~ must be forwarded to the board and it ~~shall~~ must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision ~~in accordance with~~ under the terms of this section.
6. If the state engineer, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint ~~in accordance with~~ under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court ~~in the event of~~ on conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within ~~such a~~ reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost ~~thereof~~ 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.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall assign to the water topics overview committee the responsibility of studying the use of quick take in eminent domain by water resource districts. The study must include input from stakeholders, including the state water commission, water resource districts, and landowners. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

Approved April 22, 2015

Filed April 22, 2015

CHAPTER 474

HOUSE BILL NO. 1352

(Representatives Hofstad, D. Johnson, Muscha)
(Senators Armstrong, Klein, Mathern)

AN ACT to repeal section 4 of chapter 496 of the 2011 Session Laws, relating to eliminating the expiration date for special assessments for irrigation by the Garrison diversion conservancy district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 4 of chapter 496 of the 2011 Session Laws, as amended by section 6 of chapter 486 of the 2013 Session laws, is repealed.

Approved April 8, 2015

Filed April 8, 2015