

FISCAL NOTE
Requested by Legislative Council
02/05/2015

Amendment to: HB 1175

- 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				\$20,000		
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).*

A Bill for an Act to create and enact a new section to chapter 20.1-03 of the NDCC, relating to permits for dredging.

- 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.*

The bill amendment has an effect on expenditures because it will require staff time to amend Administrative Rules, develop a list of water bodies eligible to be dredged, determine qualifications of a dredger, and create an informational packet on the permitting process and the required permits for dredging.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None anticipated.

- 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.*

The bill amendment has an effect on expenditures because it will require staff time to amend Administrative Rules, develop a list of water bodies eligible to be dredged, determine qualifications of a dredger, and create an informational packet. The amount of time this would take is difficult to estimate. Our best estimate is \$20,000.

- 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.*

The bill would increase expenditures by approx. \$20,000.

Name: Kim Kary

Agency: ND Game and Fish Dept.

Telephone: 328-6605

Date Prepared: 01/19/2015

FISCAL NOTE
Requested by Legislative Council
01/12/2015

Bill/Resolution No.: HB 1175

- 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).*

A Bill for an Act to create and enact a new section to chapter 20.1-03 of the NDCC, relating to permits for dredging.

- 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.*

The bill amendment has an effect on expenditures because it will require staff time to amend Administrative Rules, develop a list of water bodies eligible to be dredged and qualifications of a dredger.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None anticipated.

- 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.*

The bill amendment has an effect on expenditures because it will require staff time to amend Administrative Rules, develop a list of water bodies eligible to be dredged and qualifications of a dredger. The amount of time this would take is difficult to estimate.

- 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.*

The amount is difficult to estimate.

Name: Kim Kary

Agency: ND Game and Fish Dept.

Telephone: 328-6605

Date Prepared: 01/19/2015

2015 HOUSE AGRICULTURE

HB 1175

2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1175
1/22/2015
22370

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to permits for dredging

Minutes:

Attachment #1 & 2

Representative Kempenich: Sponsor of the bill

The intent is to have the small dams and lakes cleaned out after silting in. We are running it through the Game and Fish Department to get it into a procedure.

Representative Alan Fehr: Line 12, the term "person's own property." Is that adequately defined? Who actually owns it and has authority?

Representative Kempenich: I am assuming whoever has the title on the property. A lessor isn't an owner.

Representative Craig Headland: Give an example why the director would designate a body of water for dredging?

Representative Kempenich: There is a dam northwest of Arnegard. The dam had to be dredged to get the boat in the water. They don't disturb the habitat as much as a dragline would. Many bodies of water were good recreation areas years ago but have silted in. It is less invasive than other ways

Representative Craig Headland: We are talking about manmade bodies and not natural?

Representative Diane Larson: Along the Missouri River, the flood washed trees, etc. into the water. It should have been cleaned out. After the debris has been there for a while, it is designated as fish habitat and can't be moved. Would this bill have Game and Fish determine what is good for that land rather than the land owners? Different agencies have different priorities.

Representative Kempenich: The intent wasn't to get into federal waterways. This was aimed to small bodies of water.

Dustin Wagner, MudMen Dredging, Inc.: We are the ones digging out Arnegard Dam. We went from 1½ feet of water to 20.2 feet in the channel. There are no fish in there. We are able to offset the cost by selling it to the pipeline companies who need topsoil.

Pheasant Lake is in the eastern part of the state. We ran into an issue on the county side. Game and Fish owns the fish and the Health Department deals with the water quality. When water quality goes up, property value goes up, Game and Fish has more water for the fish, and it can be used for boating again.

When taking soil samples, the soil quality is good enough for organic farming.

Representative Craig Headland: How does the process get started?

Dustin Wagner: I live on Pheasant Lake. That is where we started. Why are we dealing with flooding when the dam doesn't hold as much water as it is supposed to. We were repairing the same roads because we didn't have enough water storage to get the water off the roads.

Representative Diane Larson: You want the Game and Fish to issue a permit rather than the county?

Dustin Wagner: There are no set rules. There is no one entity that controls it. By getting a single entity there would be a single agency that inspects and permits the dredging. When it comes to federal waters, it takes different permitting.

Opposition:

None

Neutral:

Dave Glatt, Environmental Health Section Chief, ND Department of Health: (19:20)
(Attachment #1)

I am sympathetic to the fragmentation of several different agencies. The regulations are there. It is hard to get everybody together to identify the process.

Chairman Dennis Johnson: If we have a law already, do we need an amendment to get a one-stop agency.

Dave Glatt: If they can show us the water quality is protected, we have no issue with the dredging. There may be a need to clarify the process.

Representative Cynthia Schreiber Beck: What would it entail to get a permit for a nonfederal water way?

Dave Glatt: I do not know the process of agencies. We have an individual in our office that addresses special projects and water quality. Our concern is with what is pulled out of the lake does not run back in to the lake.

Robert Fode, Director for the Office of Project Development, ND Department of Transportation: (23:50) (Attachment #2)

Suggest amendment on line 12 by inserting "or within roadway right of way" after "property."

Dustin Wagner: We deal with Mike Ell from the Department of Water Quality. We have a filtration system that we developed. Anything over an acre in size, we still get a storm water runoff permit.

Vice Chair Wayne Trottier: How would Representative Kempenich feel about the suggested amendment?

Representative Kempenich: It is up to the committee.

Chairman Dennis Johnson: Closed the hearing.

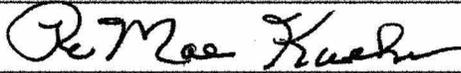
2015 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1175
1/29/2015
Job #22833

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to permits for dredging
(Committee Work)

Minutes:

Attachment #1

Chairman Dennis Johnson: The main concern is that a point of contact is needed for the people in the dredging business. They need to know who to contact, where to get information about the permitting process.

We have an amendment. (Attachment #1)

Representative Diane Larson: My concern after listening last session about the U.S. Game and Fish, I became leery about them regulating things.

Chairman Dennis Johnson: There is a difference between U.S. Fish and Wildlife and ND Game and Fish.

The amendment is for a point of contact for getting the process going. The ND Health Dept. didn't seem interested. The ND Game and Fish would be the source to do this.

Representative Craig Headland: Your amendment would require Game and Fish to put together a packet of information.

Representative Craig Headland: Moved the amendment

Representative Alex Looyen: Seconded the motion.

Voice Vote taken. Motion carried.

Chairman Dennis Johnson: The second amendment is from the Department of Transportation. Their concern is this would alleviate DOT from getting a permit to remove silt from the ditches.

Representative Craig Headland: Moved the amendment

Representative Cynthia Schreiber Beck: Seconded the motion

Voice Vote taken. Motion carried

Representative Craig Headland: Moved Do Pass as amended

Representative Alex Looyen: Seconded the motion

A Roll Call vote was taken: Yes 11, No 0, Absent 2.

Do Pass as amended carries.

Representative Looyen will carry the bill.

15.0634.01001
Title.02000

Adopted by the Agriculture Committee

January 29, 2015

Handwritten initials and date: 1-29-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 1, line 12, after "include" insert "a roadway right of way, or"

Page 1, line 16, after the underscored period insert "The director shall create an informational packet on the permitting process and the required permits for dredging and shall make this informational packet available on the department's website and at the department's offices."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1175**

House Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

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. Headland Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Bosch		
Vice Chairman Wayne Trottier			Rep. Jessica Haak		
Rep. Bert Anderson			Rep. Alisa Mitskog		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Tom Kading					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. Alex Looyen					
Rep. Cynthia Schreiber Beck					

voice vote passed

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

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

Page 1, line 16 Amendment for director to create an informational packet

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1175**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: _____

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. Headland Seconded By Rep. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman Wayne Trottier			Rep. Jessica Haak		
Rep. Bert Anderson			Rep. Alisa Mitskog		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Tom Kading					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. Alex Looyen					
Rep. Cynthia Schreiber Beck					

*voice
no
passed*

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

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

Department of Transportation amendment

Date: 1/29/2015

Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1175**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 15.0634.01001

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. Headland Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman Wayne Trottier	X		Rep. Jessica Haak	X	
Rep. Bert Anderson	X		Rep. Alisa Mitskog	X	
Rep. Alan Fehr	AB				
Rep. Craig Headland	X				
Rep. Tom Kading	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. Alex Looyen	X				
Rep. Cynthia Schreiber Beck	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Looyen

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

REPORT OF STANDING COMMITTEE

HB 1175: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 12, after "include" insert "a roadway right of way, or"

Page 1, line 16, after the underscored period insert "The director shall create an informational packet on the permitting process and the required permits for dredging and shall make this informational packet available on the department's website and at the department's offices."

Renumber accordingly

2015 SENATE AGRICULTURE

HB 1175

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1175
3/12/2015
Job #24726

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Proberg

Explanation or reason for introduction of bill/resolution:

Relating to permits for dredging

Minutes:

Attachments: #1-2

Chairman Miller opened the hearing on HB 1175.

Representative Kempenich, District 39: Introduced HB 1175 as a conversation about procedures. There is some stuff in statute now, but to get into this, you are dealing with three different agencies: the game and fish, the water commission, and the health department. HB 1175 is attempting to set that procedure up. The bill is to set some periodicals in place and it's pretty broad as to what the game and fish can do on it and it is an attempt to set some procedures in place for dredging out these water bodies around the state. This is to start a contact point and have the game and the fish set up some type of procedure to issue permits.

Senator Warner: (2:49) In my wife's hometown in western MT, there's a huge complex of flooded pits from gravel mining operation that has been flooded and abandoned and it is a popular fishing spot and is owned by the mining company. Would this require the mining to get a permit from game and fish to reestablish their rights to take the gravel?

Representative Kempenich: No, that isn't the intent and I don't think it would be because basically they would want to drain out that flooded area to get back into it again. This is to rehabilitate the water bodies of the old dams for use because over the years they have silted in. We don't have a lot on the books on dredging or any controls on it as far as who can and can't. There are three agencies to go through, the game and fish are in here because they would be the initiator of it because they know what these water bodies are like as far as what they can support and how often they die out. I don't think your example would be applicable to what this is trying to do here. And this only deals with state controlled waters not federal navigable waters.

Vice Chairman Luick: If I understand this right, they are looking at cleaning out lake bottoms; pond bottoms nothing of a navigable water way.

Representative Kempenich: Their original thought was to sell off the bottoms to pipelines, so there is some revenue source there and this is an attempt to set up some practical if they want to get funding from the heritage fund for example.

Senator Klein: So this has to be generated by some group or organization. Someone has to put some cash together to make this happen and go through the permit process. My assumption on this is that the director would have to talk to the health department and game and fish.

Representative Kempenich: The idea is that the game and fish are the contact point. The game and fish would know about some water bodies that need some rehabilitation. It is local groups right now who are selling the bottoms to pipeline companies. There are a lot of those water bodies that are fishing holes, etc. and dredging is a fairly ingenious way of dealing with some of these water bodies. Right now it works out in the western part of the state without funding from the state.

Senator Oban: On line eight, it says a person for hire engages in dredging. Does it matter what kind of a person?

Representative Kempenich: I think what it generates is that there's some money changing hands. When I read that I think it clarifies that it is a commercial operation not a private operation. I don't know how big of a water body it needs to be, but there was kind of a clarification that this was a commercial operation and not some farmer going out to clean out the dugout.

Senator Warner: I think the exemption for private property might be that, your situation is still the same where you wouldn't need a permit to dig out your own dugout that would be covered under the private property thing.

Representative Kempenich: I think there is an intent to separate out the two so that we wouldn't get private property rolled up into this.

Senator Bowman: (12:36) I signed onto this bill after I saw what this group was doing. There are a lot of opportunities for these old dams to be dredged out to rejuvenate them. There are two advantages to dredging these out: 1. It provides recreation and 2. You take the best top soil out and reuse it. If don't know about rules and regulations but if you are going to do it, you want a company who knows what they are doing.

Senator Warner I'm not entirely sure who owns the water way, is it owned by the state of ND or the corps of engineers? So the water in the water way belongs to the state of ND but who owns the water way?

Senator Bowman: I don't know, I just saw the recreational value of this bill and I remember the experiences I had as a young boy and I'd like to see other children have the same opportunities.

Dustin Wager, Mud Men Dredging: (see attachment #1) The reason we started was flood control. You have three things: flood control, cleaning for game and fish, and water quality.

As far as who owns it, that was our question to everyone else. As far as we understood, some of these dams are a tri owned thing; in Dickey County, the DOT owns the dam, the Game & Fish owns the animals, and some other entity owns the bottom, but only part of the bottom. There is some controversy over what the bottom is and who owns it. He went over dredging methods and the benefits.

Senator Klein: I see what you're doing and the service you're providing but I don't know why we need a law?

Dustin Wager: Part of it is when you get into it corps engineers don't care what you do as long as you don't dump anything back into the water. With our filtration system, if it's an acre in size or bigger, we have to have a stone water runoff permit. As far as Game & Fish, we coordinate with them.

Senator Klein: So you've done a couple projects, is it long? I'm still trying to get to how long the process is because I'm assuming Game & Fish is going to have to go through the same entities to get it done. Why do we need to this?

Dustin Wager: If they just say if you guys want to dig this out, here's what you have to do because I've been accused of stealing the dirt. Who does own the bottom, you don't really now. If it's a federal water way, the feds own the dirt.

Chairman Miller: When an entity calls you and asks you to dredge, they pay you as well or do you take the profits of the dirt?

Dustin Wager: We can only get paid once. So with the pipeline companies we just go in and ask the county commission for permission. Sometimes the county will pay us for soil restoration but we can only get paid once.

Chairman Miller: So your business model is that you are writing a contract, there is a set amount of money that you are getting to get paid, you are going to go dredge it out.

Dustin Wager informed the committee on the measurements they use and how they determine the price/worth. He also showed the benefits of the dredging projects he's done.

Opposition

Senator Klein: I'm kind of wondering about who owns the dirt? I'm still not sure how difficult it is to get these permits. Are we creating another level bureaucracy that we don't need?

Dave Glatt, Environmental Health section chief for the Health Department: I have no objection to dredging. There are already an infrastructure of rules, regulations, permits that are already on the books and I do understand the concern regarding fragmentation because it can be hard to navigate who to go to get what. I'm a little conflicted about whether we need more regulation when we have 1-3 projects a year to set up a whole new bureaucracy to deal with this. My advice is to direct one of the agencies to set up a fact sheet or a process to bring this all together as a roadmap for the individual who wants to

get into this so they use what's already out there instead of creating something new. My concern is when you create a new bureaucracy; you get into the land of unintended consequences. When you get into questions of liability and once you shift liability to the state, those regulations can become very prescriptive and very expensive to implement for one or two projects out of the year. You may go there eventually, but my recommendation is to first see what's out there and create a fact sheet for the process. As far as who owns the soil, it gets into the issue of sovereign lands. We don't want to get into those issues. We want to ensure that the water quality is protected; I do think there are current rules to ensure that the water quality is. I understand that there is some confusion and I think the agencies should make sure to get the entire basis covered and I think it is incumbent upon the agencies to develop some type of process to make sure that's clear to the people that want to do this type of work.

Senator Warner: It makes it clear that there is a carve out for privately owned land so none of this applies to privately owned land and water ways in the public domain. It seems like we are getting close to gravel mining law. I have no objections to dredging, but if it is a commercial operation profiting off of public land, are we really muddying the water here?

Dave Glatt: I don't know if we are or not. I would proceed cautiously know that there are a lot of rules on the books. We look at water quality and what was indicated before is that it is an easy permit to get and an easy permit to implement. If they'd follow that, the water quality is protected we're out of it. The local water districts may have some requirements so I think there's adequate protection out there now, it's just making sure it's all in one usable place.

Vice Chairman Luick: This is more of a comment, I grew up in the salvage business and when we were hired by insurance companies or entities to tear things apart and clean things up for EPA, it always came back to whose property was on the initial property of the initial owner. If you look at this thing as an above ground verses on underground, the rules should not change. Do you look at it the same way? It is a salvage operation above or below ground,

Dave Glatt: I think it could be that. It is a rehabilitation of a lake, improving water quality it's taking the sediment of the lake and putting it to beneficial reuse. We don't have a dog in the fight who owns the soil as long as the water quality is protected.

Greg Power, Fisheries Division for the Game & Fish: We have neutral testimony; we have the same concerns as multiple agencies currently have authority under different aspects. There's two title one at the health department and one at the state water commission that are titled lake protection rehabilitation. As a third party, our concern is how is this going to interface with more statues and administrative rule process it is going to have to follow. There will have to be more coordination in the mix and we wanted to share with everyone what's out there right now in statute that applies to this subject matter.

Senator Klein: It's my understanding when you rile up the dirt in the bottom of the creek, the eco system gets tipped over a bit. Are there also concerns or do you have any comments on fisheries?

Greg Power: There are issues and there are places and times when fish are more vulnerable during the spawn when eggs are deposited where it's a bad time to stir things up because eggs will suffocate. There are certainly biological impacts. Being muddy is not unusual for ND because of the floods, draughts, and wind that can stir up the lakes and can compromise the fisheries. We have to be careful and I assume that's why we have the rules and regulations that are in place.

Chairman Miller: He brought up the issue of the fertilizers and the chemicals and the high level of silt that deposits in these water ways that can be problematic for the fish. There are benefits and costs, so dredging isn't bad, it's just doing them at the right time, correct?

Greg Power: That's right. It is a major issue and the prairie states are that way. The state of Iowa earmarks 17-19 million dollars a year to spend on one lake and a lot of it goes towards dredging.

Senator Klein: So your agency isn't an obstacle for these folks to dredge, they just have to make some contacts and get the project going?

Greg Power: And what was referenced earlier, often times we are the contact agency and we essentially have no authority. We tell them to deal with the health department and city water commission, and we'll try to assist where we can. We don't really fund either--we haven't funded any lake restoration projects.

Chairman Miller: Is there a value of road-mapping a road to restoration?

Greg Power: In permitting itself there probably is a lot of value in it to help folks like Dustin here.

Vice Chairman Luick: Do you think that your department should be the first contact on this or should the state water commission be the first contact?

Greg Power: If the intent of a dredging project is something to do with a fish, it'd probably be best to come to us to get a priority list. There are some lakes that are so off the charts where it's 20 million dollars when they do it for one lake so we'd have some insight on some priority lakes. But not every project has something to do with fish.

Senator Klein: Was your organization involved in those three projects? Did you go back and take a look when they are done to see how that turned out?

Greg Power: To a degree, we're not that engaged with it but there's some follow up that goes on. When it comes to managing the fishery, it is so dynamic and there are so many things that come into play that are cause and effect so it's difficult to make a fair assessment. We have been involved a little bit, especially on Fessenden Lake.

Senator Warner: the previous speaker that you owned the critters in the lake. A few years ago we had a discussion about who owned the deer and we determined that nobody owns the deer and the state certainly didn't want to own the deer because then the state becomes liable for all the damage deer do. The dams are not natural occurring

ecosystems, is there a distinction there that can be made? If someone has planted fish, do you have jurisdiction over the fish that are in there and do you have regulatory authority over public waters?

Greg Power: For the most part the public come to us to get a lake going. There are many lakes out there that are private and there's a process of permitting they go through that's free. Those individuals own the fish, it is not a public resource. So there are some lakes out there in that order.

Senator Warner: Do you have to issue a license for them to take fish from their land?

Greg Power: If you own or lease the land, you can fish for free.

Submitted Documents:

Lake Protection and Rehabilitation (see attachment #2a)

Dredged and Fill Material Disposal (see attachment #2b)

Chairman Miller closed the hearing on HB 1175.

2015 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1175
3/12/2015
Job #24763

- Subcommittee
 Conference Committee

Committee Clerk Signature

Emmery Broberg

Explanation or reason for introduction of bill/resolution:

Relating to permits for dredging

Minutes:

Attachments: n/a

Chairman Miller opened the discussion on HB 1175. I don't know what the motivation is behind this bill. I do think there is some merit in probably crafting some kind of guideline or but no a permit. Maybe we could talk to some of the other departments about helping people navigate some of the bureaucracy.

Senator Klein: I don't know if it is a bureaucratic mess or if you just want to make it really easy in order to get things done. I heard Dave Glatt say that one of these agencies could set up a fact sheet so we don't create another level of bureaucracy. I was trying to dig down and see why we really needed this and I really never heard that. I heard how good his piece of equipment works and it does a lot of stuff and I appreciate that but I'm still struggling with why we want to create more permitting processes when I heard there may be unintended consequences. Other than the prime sponsors who are supporting their constituent, I didn't hear other people who thought this was a good idea. I thought you would've heard from county/cities supporting this.

Chairman Miller: It seems like it is a relatively new thing to our state.

Vice Chairman Luick: I am on that same page. I don't think we have the problems that may be anticipated. I think we are trying to fix a problem that may not or has not happened at this point, so I am in favor of not going anywhere with it also.

Senator Warner: I had a conversation with Senator Dotzenrod had he said there is a similar bill having to do with rewrites of dredging law in general which is in natural resources. I don't support this bill. I think your comment about creating a fact sheet would be useful. I think the overall question is who owns public property and who has access to assume the value of public property. We can make arguments that there are benefits to the dredging, this is a mineable product with value, it isn't just waste product. We can argue that the value isn't justified. This idea of causally assuming that someone else could take something out of public property, I think we would risk our responsibility if we weren't a little

more protective as to who actually owned a resource and who actually owns the property that it is on because this clearly excludes private property.

Chairman Miller: Initially what I thought this guy was doing was offering to dredge dams and then taking the dirt to sell. That's what I thought he was doing, but it sounds like they are hiring him to dredge it out and then taking ownership over the dirt. I really don't why you'd want a permit, I thought he had more nefarious reasons for it but that was not the case.

Vice Chairman Luick: If you look at this another way, let's say you have a farmers field right beside a highway ditch and you have a water way and erosion going into that ditch. You can look it two ways: 1. Whose property is it once it leaves the farmers property, does it become the highway or the states property? 2. Who takes the liability of that because now it is causing a problem? I assume that highway department will come back and say if it's a liability issues, it's your property. In cases where they are dredging this out, I think because it is so new, no one is identifying that it is a liability issue so they aren't forcing anyone to get it out of that dam area. I think that this is too new for us to start to make laws about it.

Senator Warner: First of all, highway right-a-ways are excluded from the law and I think in general determining between point source pollution and non-point source pollution where the aggregate of the pollution is coming from such a broad area where you can't attribute it to any particular cause or owner and then it becomes a public health issue.

Chairman Miller: If there is another bill dealing with this issue, we could probably let them deal with that.

Vice Chairman Luick moved Do Not Pass on HB 1175

Senator Larsen seconded the motion.

A Roll Call vote was taken. Yea: 6; Nay: 0; Absent: 0.

Do Not Pass carries.

Senator Warner will carry the committee's recommendation to the floor.

REPORT OF STANDING COMMITTEE

**HB 1175, as engrossed: Agriculture Committee (Sen. Miller, Chairman) recommends
DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).**
Engrossed HB 1175 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1175

#1

Testimony
House Bill 1175
House Agriculture Committee
January 22, 2015, 9:00 a.m.
North Dakota Department of Health

Good Morning Chairman Johnson and members of the House Agriculture Committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health. We have primary responsibility for the implementation of environmental protection programs in the state.

I am here today to provide background information relating to HB 1175. We provide the following two comments:

- > The Department does not oppose the proper application of dredging technology.
- > We believe that current federal and state regulations ensure the proper use of dredging technology in North Dakota.

This concludes my testimony. I am happy to address any questions you may have.

#2

HOUSE AGRICULTURE COMMITTEE

January 22, 2015 9:00 a.m. / Peace Garden

**North Dakota Department of Transportation
Robert Fode, Director of Project Development**

House Bill 1175

Mr. Chairman and members of the Committee – I'm Robert Fode, Director for the Office of Project Development at the North Dakota Department of Transportation (DOT). Thank you for giving me the opportunity to provide neutral testimony related to HB 1175 today.

From my reading of the proposed legislation it appears the DOT along with other governmental agencies that maintain roads, may be required to get a permit if their roadway ditches need maintenance - if the ditch is part of a water body. If the intent of this legislation was not to include maintenance activities of roadways the Department would like to suggest an amendment to HB 1175.

For government agencies with roadway right of way DOT would suggest the following:
"The designation may include a body of water or waterway if it is used or may be used by the public for fishing or recreation and may not include a person engaging in dredging on that person's own property or within roadway right of way."

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

1/29/15

HB
1175

#1

Rep Johnson

Page 1, line 16 after use. Insert "The director shall create an informational packet regarding the required permits and permitting process for dredging. The informational packet on dredging requirements will be made available at the North Dakota Game and Fish department, and on the North Dakota Game and Fish website."

3/12/15 HB1175



INNOVATIVE MATERIAL SYSTEMS, A Division of LWT, LLC
THE WORLD'S LEADING SUPPLIER OF ONE-TRUCK TRANSPORTABLE SELF-PROPELLED DREDGES

The IMS Commitment to You

IMS, Division of Liquid Waste Technology, LLC makes it their business to know what you need to get the job done right. This starts with a commitment to maintaining a strong relationship before, during and most importantly after you invest in a Versi-Dredge® system. If a problem arises and you need assistance, you can be confident that IMS will be there to assist you. That is why hundreds of our customers around the world will tell you that we are problem solvers — a useful resource — a value-added partner.

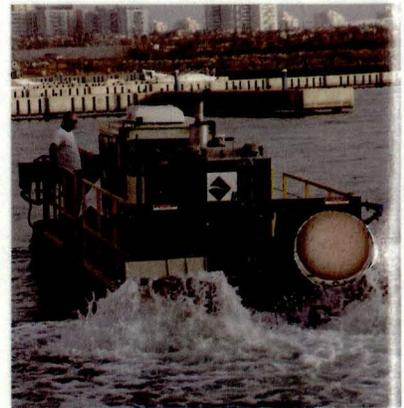
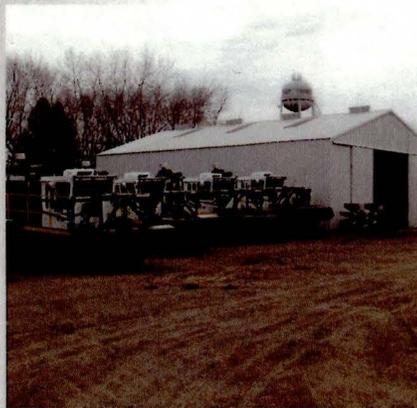
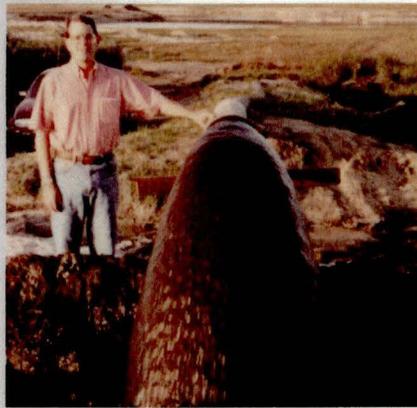
Turn-Key Design

What separates IMS from the competition is our ability to incorporate our advanced technologies into a one-truck transportable and easy-to-operate design. IMS's one-truck transportable design was carefully engineered with close attention paid to ballast, weight, space, maneuverability, safety and durability. The Versi-Dredge® comes standard with the patented STARWHEEL® Drive self-propulsion system which does not require any additional equipment like anchors, cables or a dredge tender boat.

The Versi-Dredge® is also the easiest dredge to operate on the market. Two joystick controls integrated into an ergonomic operator's chair control all dredge functions and reduce operator stress that is associated with hydraulic lever controls. In addition, all IMS operator cabs are climate-controlled and come standard with digital and analog control displays as well as a digital depth gauge. All IMS dredges are delivered with 300 feet (91m) of roll flat discharge hose and floats to provide the customer with the initial discharge length needed for most projects.

IMS Patented Propulsion Technology

IMS's patented STARWHEEL® Drive self-propulsion system is a customer-driven concept that has made dredging easier by simply eliminating the entire cable rigging process and turning the dredge into a one man operation. Operators no longer need to block off entire channels or shutdown a marina to cable rig for each and every boat slip. The STARWHEEL® Drive system has simplified the dredging process so much that operators have reported production



HYDRAULICS

- Eaton™, Oil Gear air Pumps
- Eaton™ (Char-Lynn) Parker Motors
- 7012 slurry pump d SunSource

DISCHARGE HOSE

- 300 ft. (91M) of roll flat discharge hose included



FLOATATION

- Compartmentalized catamaran hull design
- Steel construction with bulkhead and skeleton-frame reinforcement
- Epoxy coated



STARWHEEL DRIVE SELF-PROPULSION

- True self-propelled dredging
- Eliminates need for cables or spuds
- Increases dredge performance

Versi-Dredge® Layout

POWER UNIT

- Turbo-charged after-cooled John Deere diesel engine

OPERATOR'S STATION

- Joystick controlled
- Electronic depth gauge
- Ergonomic air-ride chair
- A/C and heating systems
- Dual bi-folding doors with port and starboard access

EXCAVATOR CUTTERHEAD

- Dual-recessed hydraulic drive motors
- Carbide steel cutter teeth
- Shrouded for ultra-low turbidity
- Application versatile

DREDGE PUMP

- Ladder-mounted submersible hydraulic drive pump
- High- and low-pressure systems available
- Abrasive-resistant pumps available
- Higher percentage of solids than hull mounted pumps

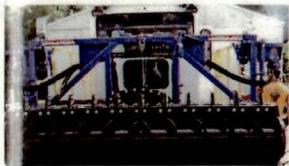
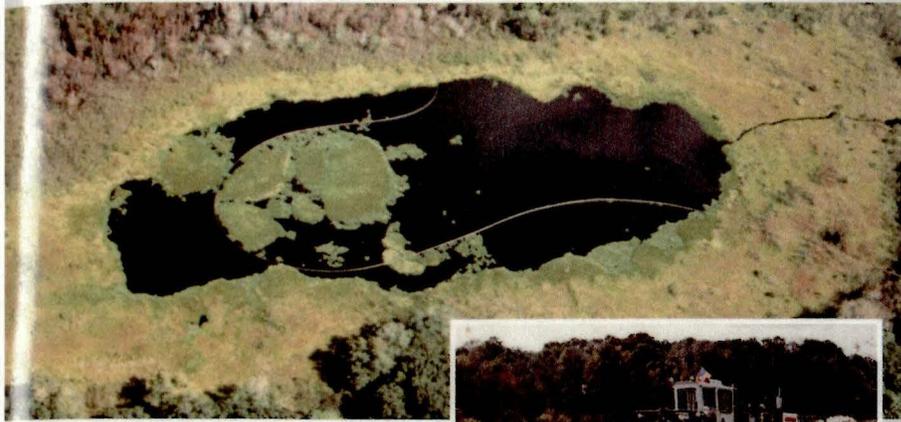
increases of up to 40 percent due to the fact that the dredge can immediately maneuver itself into position without the use of a dredge tender or anchor men.

The STARWHEEL® Drive self-propulsion system consists of two independently driven paddle wheels that the operator can lower and raise independently of each other. Both STARWHEELS® are variable speed allowing the dredge to turn around in place inside the confines of a narrow waterway. On the surface, the STARWHEELS® act as paddle wheels allowing the dredge to proceed into its cut in light materials like sludge and soft mud. On the bottom of a waterway, the STARWHEELS® act as a positive traction drive system using the edges of the paddles to grab the bottom and use positive force to propel the dredge forward in sand, mud and heavier materials. The STARWHEELS® provide heavy torque that can be felt in the operator's chair so the operator knows when he is in the cut and moving forward into the material. The STARWHEELS® can be lowered and operated down to the maximum digging depth of the dredge.

Excavator Cutterhead

The IMS Excavator cutterhead, which comes standard on every Versi-Dredge®, is a unique design that uses carbide tipped teeth to aggressively cut through the material and direct the flow straight to the pump. The system provides more cutting force and can draw in more solids than conventional spiral augers with wider cutter bars that can actually restrict slurry flow to the pump when fully submerged. The cutterhead is mounted inside a shroud that significantly reduces turbidity, unlike conventional cutterheads which allow the particles to flow unrestricted into the water column. The Excavator is powered by two high-torque direct drive motors that give the Versi-Dredge® the extra edge over the competition. Since the Versi-Dredge® is commonly used in applications where large metallic and organic debris can be found, the system is safe-guarded with a pressure relief valve that will automatically shut the cutterhead down to prevent damage to the dredge. The Excavator cutterhead shroud also comes standard with a removable rock guard that allows the operator to restrict the size of debris that can enter the pump volute. This can help reduce downtime when

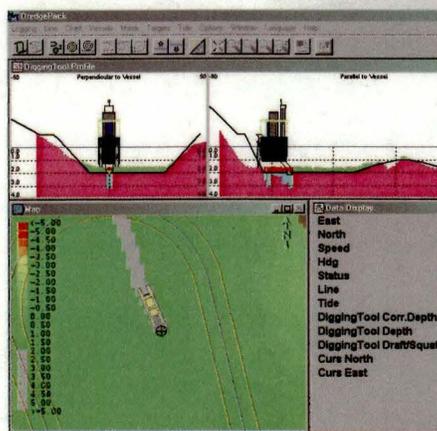
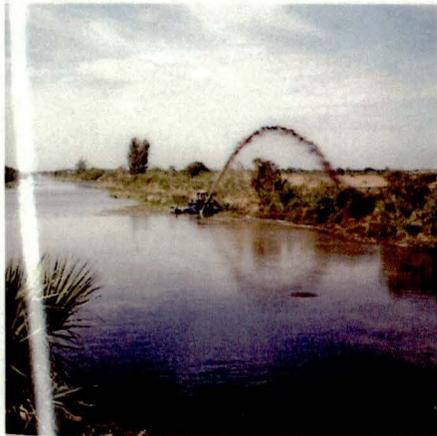




BEFORE



AFTER



dredging in heavy debris that might clog the pump.

Weedmaster Cutterhead

The optional IMS Weedmaster cutterhead is a proprietary design that uses aggressive cutter knives that shear heavy vegetation and mulch it prior to sending it to the dredge pump. The Weedmaster cutterhead can be used in standard pipeline mode or can be used with the IMS Broadcaster attachment which sidecasts the material to the shore in an arc that can reach up to 100 feet (30m). This unique cutterhead converts the Versi-Dredge® into an aquatic weed harvester. The cutterhead bolts on in place of the standard cutterhead using simple hand tools (a modified impeller may be required depending on the thickness of the vegetation). The Weedmaster makes the Versi-Dredge® a multi-task machine and allows the dredge to remove a weed cover prior to dredging. The Weedmaster also saves the end user money since it is often 70 to 90 percent less expensive than purchasing an additional conveyor type harvester which can't reach the cutting depth of the Weedmaster.

Broadcaster Attachment

The optional IMS Broadcaster attachment allows the dredge to quickly discharge the dredged material on the shore. This can be highly beneficial when dredging an emergency boat channel, wetlands creation or vegetation removal in rural canals. The Broadcaster fits directly at the end of the dredge ladder replacing the discharge line. The Broadcaster narrows the discharge diameter of the ladder creating a high-pressure cannon that can shoot silt, sand and vegetation up to 100 feet (30m) away depending on the percentage of solids.

GPS System

The optional IMS GPS system allows the operator to keep track of the dredge's position with sub-meter accuracy. This is ideal for large lakes and rivers where keeping track of the cuts can be tricky. Additional software can be added to keep track of where material has been removed, a feature which is beneficial for contract dredging. The IMS GPS system includes a laptop display mounted in the cab, dual GPS receiver and antennas, submersible pressure transducer for auger depth measurement,

installation at the factory, and on-site training and calibration.

Versatility

The Versi-Dredge® is designed to tackle almost any project. IMS recognizes that no two dredging projects are alike. Over the past 20 years the Versi-Dredge® has been used in over 35 countries and on thousands of job sites, including:

- Marinas and Harbors
- Lakes
- Canals
- Reservoirs
- Sand Mines
- Rivers
- Fly and Bottom Ash Ponds
- Mine Tailings Ponds
- Boating Channels
- Resort Beaches
- Paper Mill Lagoons
- Weed Removal

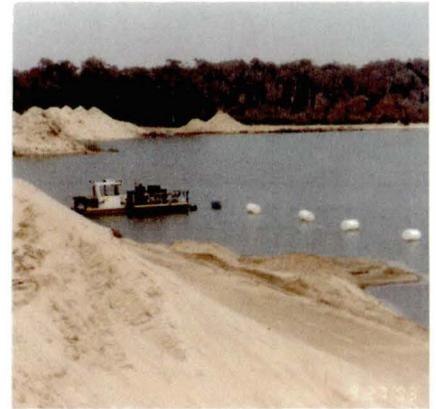
IMS Service & Parts Division

IMS realizes the impact that downtime can have on the customer's bottom line especially since many dredging operations take place in remote locations. That is why the Versi-Dredge® has been designed for low maintenance in even the most extreme inland dredging conditions.

In the event that your Versi-Dredge® experiences a problem, IMS is at your service and will be there to support you. Whether you are a sand producer in the U.S., a government agency in South East Asia or a resort in the Caribbean, an IMS service representative will be available to troubleshoot the problem over the phone, by e-mail, or to come directly to your site to get your project operational again.

When you need parts IMS will be there to assist you. IMS has valuable relationships with its vendors and can deliver most orders within 24 to 72 hours. If a part needs to be shipped by air, land or sea, you can rest assured knowing that your parts will get to you as quickly as possible and with the proper paperwork.

High number of repeat customers, and over 400 units sold worldwide, demonstrate our success with customer after-sales support and total satisfaction.



General Specifications

IMS 5012LP

IMS 5012HP

IMS 7012HP

OPERATING DIMENSIONS			
Length	42 ft. 7 in. (13.0 m)	45 ft. 6 in. (13.9 m)	51 ft. 5 in. (15.7 m)
Width	11 ft. 3 in. (3.4 m)	11 ft. 3 in. (3.4 m)	12 ft. (3.66 m)
Height	10 ft. (3.1 m) w/ pre cleaner removed	10 ft. (3.1 m) w/ pre cleaner removed	10 ft. 5 in. (3.2 m) w/ air filter removed
Weight (less fuel)	27,915 lbs. (12,662 kg)	30,445 lbs. (13,810 kg)	47,700 lbs. (21,636 kg)
INTERNATIONAL SHIPPING DIMENSIONS			
Length	39 ft. 3 in. (11.96 m) - STARWHEELS® removed and arms up	41 ft. 9 in. (12.7m) - STARWHEELS® removed and arms up	49 ft. 2 in. (15 m) - STARWHEELS® removed
Length Option #2	N/A	39 ft. 2 in. (11.9 m) - Starwheels® & cutterhead removed and arms up	44 ft. 10 in. (13.7 m) - Starwheels® & arm ends removed
Width	10 ft. 10 in. (3.3 m)	10 ft. 10 in. (3.3 m)	12 ft. (3.66 m)
Height	9 ft. 8 in. (2.94 m) air cleaner removed	9 ft. 8 in. (2.94 m) air cleaner removed	10 ft. (3.1 m) w/ muffler and air filter removed
Weight (less fuel)	25,800 lbs. (11,700 kg)	29,245 lbs. (13,265 kg)	46,300 lbs. (21,000 kg)
Shipping Method	break bulk or 40 ft. (12.2 m) flatrack, 20' ocean container required for all shipments	break bulk or 40 ft. (12.2 m) flatrack, 20' ocean container required for all shipments	break bulk, 20' ocean container required for all shipments
FLOTATION			
Dimensions	Two (2) pontoons, 39 in. x 38 in. x 360 in. (991 mm x 965 mm x 9,144 mm); 10 ga. Steel sides, bottom and 1/4" diamond plate tops; internal bulkheads and stiffeners, and painted w/ a marine grade epoxy-urethane paint.	Two (2) pontoons, 39 in. x 38 in. x 408 in. (991 mm x 965 mm x 10,360 mm); 10 ga. Steel sides, bottom and 1/4" diamond plate tops; internal bulkheads and stiffeners, and painted w/ a marine grade epoxy-urethane paint.	Two (2) pontoons, 45 in. x 43 in. x 468 in. (1,143 mm x 1,092 mm x 11,887 mm); 10 ga. Steel sides, bottom and 1/4" diamond plate tops; internal bulkheads and stiffeners; and painted w/ a marine grade epoxy-urethane paint.
Displacement	29,200 lbs. (13,245 kg)	31,500 lbs. (14,300 kg)	60,500 lbs. (27,400 kg)
Draft	30 in. (762 mm)	30 in. (762 mm)	35 in. (889 mm)
WORKING CAPACITY			
Cut	108 in. (2,743 mm) wide x 22 in. (559 mm) deep	108 in. (2,743 mm) wide x 22 in. (559 mm) deep	135 in. (3,430 mm) wide x 26 in. (660 mm) deep
Working Depth	22 ft. (6.1 m)	22 ft. (6.1 m)	30 ft. (9.1 m)
Depth Extension	up to 28 ft. (8.5 m)	none available	none available
ENGINE			
Type	John Deere Diesel Model 6090HF070, 6-cylinder, 9.0 L, 325 HP (242kW) @2,200 rpm	John Deere Diesel Model 6090HF070, 6-cylinder, 9.0 L, 325 HP (242kW) @2,200 rpm	John Deere Diesel Model 6135HF070, 6-cylinder, 13.5 L, 425 HP (317 kw) @ 2,100 rpm
Fuel Capacity	300 gal. (1,135 litres)	300 gal. (1,135 litres)	400 gal. (1,512 litres)
Fuel Consumption	15.9 gal/hr. (60.2 liters/hr.)	15.9 gal/hr. (60 liters/hr.)	20.6 gal/hr. (78 liters/hr.)
CUTTERHEAD			
Cutterbar Diameter	22 in. (559 mm)	22 in. (559 mm)	26 in. (660 mm)
Cutterbar Length	108 in. (2,743 m)	108 in. (2,743 m)	135 in. (3,430 mm)
Drive	Recessed dual hydraulic motor; direct drive with no gear reduction.	Recessed dual hydraulic motor; direct drive with no gear reduction.	Recessed dual hydraulic motor; direct drive with no gear reduction.
Speed (variable)	0 to 95 rpm @ 2,500 psi	0 to 95 rpm @ 2,500 psi	0 to 95 rpm @ 2,500 psi
Cutterhead Torque	23,885 in.-lbs. (2,969 N-m) @ 2,500 psi (peak)	23,885 in.-lbs. (2,969 N-m) @ 2,500 psi (peak)	23,885 in.-lbs. (2,969 N-m) @ 2,500 psi (peak)
Cutterhead Tip Force	2,171 lbs. (9,657 N)	2,171 lbs. (9,657 N)	1,837 lbs. (8,171 N)
Cutterhead Teeth	replaceable carbide steel teeth	replaceable carbide steel teeth	replaceable carbide steel teeth
DREDGE PUMP			
Type	IMS	GIW	GIW
Discharge Diameter	12 in. (305 mm)	8 in. (203 mm)	10 in. (254 mm)
Suction Diameter	9.75 in. (248 mm)	10 in. (254 mm)	12 in. (305 mm)
Sphere Passage	6 in. (152 mm)	4 in. (101 mm)	5 in. (127 mm)
Pump Performance	3,500 gpm (220 litre/sec) @ 65 ft. (19.8 m) TDH @ 900 rpm	3,500 gpm (220 litre/sec) @ 143 ft. (43.6 m) TDH @ 881 rpm w/ 2,000 ft. (610 m) discharge length.	5,000 gpm (315 liter/sec) @ 125 ft. (38.1 m) TDH (slurry s.g. 1.25) @ 760 rpm w/ 2,000 ft. (610 m) discharge length.
Speed (variable)	0 to 990 rpm	0 to 880 rpm	0 to 760 rpm
PROPULSION SYSTEM			
PROPULSION	STARWHEEL® Drive Self-Propulsion system; cable drive infrastructure in place (cables & anchor plates sold separately).	STARWHEEL® Drive Self-Propulsion system; cable drive infrastructure in place (cables & anchor plates sold separately).	STARWHEEL® Drive Self-Propulsion system; cable drive infrastructure in place (cables & anchor plates sold separately).
Speed (variable)	0 to 15 rpm (starwheel drive) 0 to 55 fpm (cable drive)	0 to 15 rpm (starwheel drive) 0 to 55 fpm (cable drive)	0 to 15 rpm (starwheel drive) 0 to 55 fpm (cable drive)
PIPE CONFIGURATION			
Type	HDPE	HDPE	HDPE
Diameter	12 in. (305 mm)	10 in. (254 mm)	12 in. (305 mm)
SDR	32.5	26	26
Fittings	quick disconnect or flanged	quick disconnect or flanged	quick disconnect or flanged
ESTIMATED HOURLY OPERATING COSTS			
Fuel @ \$4.60/gallon	\$73.14	\$73.14	\$94.76
Insurance	2.00	2.00	
Labor (2 Men @ \$16.00/Hr.)	32.00	32.00	
Maintenance (Filters, etc.)	1.20	1.20	
Accrued Mechanical Overhaul	4.00	4.00	4.00
Pump & Cutterhead Wear	6.00	5.75	5.00
Hull Maintenance	3.60	3.60	3.60
Hourly Estimated Operating Cost in U.S. Dollars	\$121.94	\$121.69	\$142.56
	Prices subject to local economics	Prices subject to local economics	Prices subject to local economics

CHAPTER 61-30
LAKE PROTECTION AND REHABILITATION

#2a
3/12/15
HB1175

61-30-01. Definitions.

In this chapter, unless the context otherwise requires, the term:

1. "Department" means the state department of health.
2. "Eligible project cost" means costs under construction contracts, supervision of construction work; administration; materials and equipment acquired, consumed, or expended specifically for the project; and preparation of construction drawings, specifications, estimates, and construction contract documents.
3. "Lake protection and rehabilitation projects" means projects which are designed to reduce eutrophication of lakes through watershed or in-lake treatments, or both.
4. "Unit of government" means political subdivisions of the state or state agencies with responsibilities for public lake development and control.

61-30-02. Eligibility and priority.

The department shall promulgate rules for determining the eligibility and priority rating of lakes for protection and rehabilitation projects. Criteria to be considered shall include the following:

1. Severity of the problem;
2. Impact on area recreation and fisheries;
3. The likely effectiveness of the plan; and
4. Ability of the applicant unit of government to implement the plan.

The department shall, pursuant to such rules, establish a priority list of lakes eligible for protection and rehabilitation.

61-30-03. Grants.

Grants shall be made only to units of government and only for eligible lakes at a sum not to exceed twenty-five percent of the eligible project cost when federal funding is available. No grants shall be made for studies to determine the necessity or feasibility of eligible projects.

61-30-04. Public access.

No funds appropriated in this chapter may be used for lake protection and rehabilitation projects unless adequate public access to and use of the lake is assured.

61-30-05. Conservation district plan.

No application for state funds may be accepted unless assurance has been given in writing to the applicant by any affected soil conservation district that a plan for lake protection and rehabilitation which controls and identifies pollutants from point and nonpoint sources which come under the jurisdiction of the district has been approved by the district.

#26
3/12/15
HB1175

**CHAPTER 61-38
DREDGED AND FILL MATERIAL DISPOSAL**

61-38-01. (Contingent effective date - See note) Definitions.

The state engineer shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

61-38-02. (Contingent effective date - See note under section 61-38-01) Powers.

The state engineer has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants may not be expended for other than the purposes for which provided.
4. To enter upon or through a permittee's premises where dredged or fill material is discharged, after written notice to the permittee. Such power may be exercised by authorized agents, representatives, and employees of the state engineer.
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of this chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter, including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.
10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

61-38-03. (Contingent effective date - See note under section 61-38-01) Permits - Certification from state department of health required.

The state engineer may not issue a permit under this chapter without a certification from the state department of health that the permitted activity will not adversely affect water quality.

61-38-04. (Contingent effective date - See note under section 61-38-01) Specification of disposal sites.

The state engineer shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the state engineer. The rules must be consistent with federal law. The state engineer may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site whenever the state engineer determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

61-38-05. (Contingent effective date - See note under section 61-38-01) Discharge of dredged or fill material - Permit required - Exceptions.

1. Except as otherwise provided by this chapter, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the state engineer. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:

- a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 61-38-06;
 - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;
 - d. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches;
 - e. Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the state;
 - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters of the state are not impaired, that the reach of the waters of the state is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or
 - g. The placement of fill material associated with activities which the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity whose purpose is to convert an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

61-38-06. (Contingent effective date - See note under section 61-38-01) General permits.

1. In carrying out the functions relating to the discharge of dredged or fill material, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards which apply to any activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the state engineer which are consistent with federal law.
2. A general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.
3. The state engineer may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

61-38-07. (Contingent effective date - See note under section 61-38-01) Emergency permits.

The state engineer may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

61-38-08. (Contingent effective date - See note under section 61-38-01) Permit application - Notice - Hearing.

Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the state engineer. The application must be on a form prescribed by the state engineer and must include information required by the state engineer. The state engineer may issue a permit after notice and opportunity for public hearing. Within fifteen days of receipt of all the information required to complete an application for a permit, the state engineer shall publish the notice.

61-38-09. (Contingent effective date - See note under section 61-38-01) Proceedings.

1. Any proceeding to determine compliance or violation of the provisions of this chapter or any rule, order, or condition in a permit issued pursuant to this chapter by the state engineer must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the state engineer if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

61-38-10. (Contingent effective date - See note under section 61-38-01) Penalties.

The state engineer may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The state engineer may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The state engineer may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such violation.
3. The state engineer may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

61-38-11. (Contingent effective date - See note under section 61-38-01) Restoration.

In lieu of or in addition to the penalties authorized under section 61-38-10, the state engineer may require restoration of areas in which dredged or fill material has been illegally discharged. If the state engineer determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the state engineer shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the state engineer within thirty days of receipt of the notice. If the area is not restored as required, the state engineer shall cause the restoration of the area and assess the cost of the restoration against the person or persons responsible for the illegal discharge.