19.0176.04000

FISCAL NOTE

Requested by Legislative Council
04/22/2019

Amendment to: HB 1202

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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 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).*

House Bill 1202 creates and enacts a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

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.*

Section 2 of House Bill 1202 relates to navigability determinations by the State Engineer. Costs of implementing the navigability determinations, include:
1. Water Commission employee salaries in researching and preparing the navigability determinations;
2. Water Commission's costs of public hearings regarding the preliminary findings, including publishing and advertising costs;
3. Cost of legal challenges to the navigability determinations, which costs would be incurred by both the North Dakota Board of University and School Lands and the State Water Commission. Legal costs could be estimated at $100,000+ per lawsuit per water body for each agency.
4. For determinations made by the State Engineer before the effective date and not revisited under Section 5 of the bill, those determinations would be vacated resulting in a loss of sovereign land management authority and sovereign land mineral assets by the State. This would include both surface and subsurface acreage, with resulting mineral losses to the State. The amount of these losses cannot be determined at this time.
5. The State of North Dakota may be required to repay bonus and royalties received if a water body previously determined to be navigable by the Water Commission is now found to no longer be navigable or if the Water Commission does not begin the review process within the proposed time frame. The value of this cannot be determined
at this time but could be significant.
6. Department of Trust Lands employee salaries to issue refunds and update department records. Potentially an additional FTE will be needed to carry out any asset adjustments.
7. Once a water body is determined navigable, the State would need to conduct ordinary high water mark surveys for leasing purposes.
8. The Water Commission could incur additional project costs. For example, if the Red River is determined to be non-navigable, the Sheyenne Water Supply Project could incur additional costs of $20 million dollars for increased easements, surveys, and title work.

These costs are unknown at this time but are anticipated to be significant.

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.*

   The Department cannot determine the impact on revenues at this time; however, the loss of future revenue from any reduction in ownership of sovereign land mineral assets, including hydrocarbons, may be significant.

   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 Department cannot determine the impact on expenditures until the navigability determinations are made, but expenditures are anticipated to be significant. The expenditures resulting from the implementation of HB 1320 will likely include costs associated with technical and legal expenditures, additional staffing, and collaboration with the Water Commission to determine navigability and ordinary high water mark which could result in the need for additional FTE for the Water Commission.

   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.*

   Continuing appropriation authority (N.D.C.C. sections 15-05-19 and 15-07-22) is used for pending authority to manage, preserve, and enhance the value of the SIIF; it is unknown if this same authority can be used for any expenditures used for this bill.

Name: Jodi Smith

Agency: Department of Trust Lands

Telephone: 701-328-2807

Date Prepared: 04/17/2019

19.0176.03000

FISCAL NOTE

Requested by Legislative Council
04/16/2019

Amendment to: HB 1202

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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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House Bill 1202 creates and enacts a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

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.*

Section 2 of House Bill 1202 relates to navigability determinations by the State Engineer. Costs of implementing the navigability determinations, include:
1. Water Commission employee salaries in researching and preparing the navigability determinations;
2. Water Commission's costs of public hearings regarding the preliminary findings, including publishing and advertising costs;
3. Cost of legal challenges to the navigability determinations, which costs would be incurred by both the North Dakota Board of University and School Lands and the State Water Commission. Legal costs could be estimated at $100,000+ per lawsuit per water body for each agency.
4. For determinations made by the State Engineer before the effective date and not revisited under Section 5 of the bill, those determinations would be vacated resulting in a loss of sovereign land management authority and sovereign land mineral assets by the State. This would include both surface and subsurface acreage, with resulting mineral losses to the State. The amount of these losses cannot be determined at this time.
5. The State of North Dakota may be required to repay bonus and royalties received if a water body previously determined to be navigable by the Water Commission is now found to no longer be navigable or if the Water Commission does not complete the review within the proposed time frame. The value of this cannot be determined at this time but could be significant.
6. Department of Trust Lands employee salaries to issue refunds and update department records. Potentially an additional FTE will be needed to carry out any asset adjustments.
7. Once a water body is determined navigable, the State would need to conduct ordinary high water mark surveys for leasing purposes.
8. The Water Commission could incur additional project costs. For example, if the Red River is determined to be non-navigable, the Sheyenne Water Supply Project could incur additional costs of $20 million dollars for increased easements, surveys, and title work.

These costs are unknown at this time but are anticipated to be significant.

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

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The Department cannot determine the impact on revenues at this time; however, the loss of future revenue from any reduction in ownership of sovereign land mineral assets, including hydrocarbons, may be significant.

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 Department cannot determine the impact on expenditures until the navigability determinations are made, but expenditures are anticipated to be significant. The expenditures resulting from the implementation of HB 1320 will likely include costs associated with technical and legal expenditures, additional staffing, and collaboration with the Water Commission to determine navigability and ordinary high water mark which could result in the need for additional FTE for the Water Commission.

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.*

Continuing appropriation authority (N.D.C.C. sections 15-05-19 and 15-07-22) is used for pending authority to manage, preserve, and enhance the value of the SIIF; it is unknown if this same authority can be used for any expenditures used for this bill.

Name: Jodi Smith

Agency: Department of Trust Lands

Telephone: 701-328-2807

Date Prepared: 04/17/2019

2019 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

HB 1202

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

HB1202
1/31/2019
31857
☐ Subcommittee
☐ Conference Committee

Committee Clerk Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the recommendations of the ND outdoor heritage advisory board

Minutes:

Chairman Porter: Called the hearing to order and the Clerk called roll.

Rep. Dalzer, Dist 8: This bill would put in code the requirement for the Heritage Advisory Committee to have a majority members of the committee vote in support of something before it went on to the Industrial Commission for final distribution. This comes about because at the last session there was an issue the ended up being a 6 to 6 tie, and didn't know how to handle it. The Industrial Commission, like the Lignite Research Council, it's in code they have to have a majority of members of the council before it can go forward. That's where this comes from. The Industrial Commission did not take the issue up but they said there was nothing in code that said they couldn't have. I think currently if you had a quorum of 7 you could pass something forward with 4 votes. This bill would require them to have 7 votes to send something forward since there's 12 members. It's my understanding the Heritage Fund is sitting with $9.2 million of uncommitted money in it. It's scheduled currently to receive off our oil forecasts somewhere in the neighborhood of $28 million. That may change before the end of the session. Questions?

Rep. Roers Jones: Who are the members of the Heritage Fund and what does the money gernerally get used for?

Rep Dalzer: The members are set in code, certain groups are all represented. The money is supposed to be used for expanding wildlife, tourism, access for sportsman, things that way.

Chairman Porter: Further questions? Testimony in support? Opposition? Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

HB1202
1/31/2019
31879

☐ Subcommittee
☐ Conference Committee

Committee Clerk Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the recommendations of the ND outdoor heritage advisory board

Minutes:

Chairman Porter: Opened the hearing on HB 1202. Rep. Roers Jones asked a question, 54-17.8-06. There's 4 members from the agricultural community, names what agencies, Farm Bureau, Farmers Union, Stockman's and ND Grain Growers; 2 members from the energy industry, 1 from the petroleum council, and 1 from the lignite energy council, 4 members from the conservation community (not named organizations); 1 member from the business community from the Greater ND Association and 1 member from the ND Parks and Recreation Association. There's also ex-officio members from the Parks and Rec, Game and Fish, State Forestry, and ND Association of Soil Conservation Districts.

Rep. Roers Jones: I pulled up the list also. My concern when I look at the membership of the board, is that there are 16 members and not one of them is from east of Steele ND. It seems we're giving the advisory board to make decisions a lot more power to make decisions on behalf of the entire state. There's a bill in the Senate right now, SB 2054, that would make the board more representative of the entire state and I think that's important. I don't want to support this measure that's going to make any minority on this board less represented.

Chairman Porter: The situation this is address is more than 1-time issue. There was the one Rep. Delzer talked about in a 6/6 tie, also issues in western, one in eastern ND where the group didn't receive a favorable recommendation from the committee and went around the committee. I personally think that's wrong, and creates a scenario where everyone on the committee is going to quit because what's the purpose of putting that time into an issue only to have the Industrial Commission go against the wishes of the advisory committee. I think it's necessary to give the power of the hearing and public process some weight before it goes to the industrial commission. Whether the east doesn't have enough membership is a separate issue.

Rep. Lefor: I move a Do Pass.

Rep. Ruby: Second.

Chairman Porter: I have a motion for a Do Pass and a second, on HB 1202. Discussion? Clerk called the roll on a Do Pass on HB 1202. 8 yes 3 no 3 absent. Motion carried. Rep. Lefor is carrier.

Date: 1-31-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

House Energy and Natural Resources 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 Lefor Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall		✓
Rep. Anderson	AB		Rep. Roers Jones		✓
Rep Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	AB		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	AB	
			Rep. Eidson		✓

Total (Yes) 8 No 3

Absent 3

Floor Assignment Rep Lefor

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

REPORT OF STANDING COMMITTEE

HB 1202: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **DO PASS** (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1202 was placed on the Eleventh order on the calendar.

2019 SENATE ENERGY AND NATURAL RESOURCES

HB 1202

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1202
3/7/2019
Job Number 33365

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the recommendations of the North Dakota outdoor heritage advisory board.

Minutes: No attachments

Chair Unruh: Opened the public hearing. All members were present.

Representative Jeff Delzer District 8 (0:10-1:45) HB 1202 deals with the OHF; it's a simple bill, it states for a grant to come forward from the committee to the Industrial Commission for funding would require a majority of the members to vote in favor. They would have to have 7 votes for it; this came about because there was a 6-6 tie forwarded to Industrial Commission. The Industrial Commission didn't have an idea how to answer it. There is nothing in Code to say anything, when you look at other councils, it takes a majority. That is why the bill is here, to bring that issue forward. We have $9 million uncommitted in the fund right now, it's scheduled to receive $15 million more.

Senator Piepkorn: Are there 12 members? Was anybody absent?

Representative Delzer: All 12 were there. This would put it in code that it would take 7 votes to forward something on.

No opposition testimony
No agency testimony.

Chair Unruh: Closed the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1202
3/21/2019
Job Number 34087

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the recommendations of the North Dakota outdoor heritage advisory board.

Minutes: No attachments

Chair Unruh: Opened committee work.
This one is fairly straightforward. For a grant application to be forwarded to the Industrial Commission, it has to have a favorable recommendation from the Outdoor Heritage Fund; which is a reasonable expectation. A 6-6 vote was the reason we had a bill earlier this session.

Senator Schaible: I move a Do Pass.
Vice-Chair Kreun: I second.

A roll call vote was taken.
Motion passes 6-0-0.

Vice-Chair Kreun will carry.

Chair Unruh: Closed committee work.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1202
3/28/2019
Job Number 34338

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the recommendations of the North Dakota outdoor heritage advisory board.

Minutes: 2 Attachments

Chair Unruh: Opened committee work on HB 1202 and asked to reconsider.

Senator Schaible: I move to reconsider my do pass motion.
Vice-Chair Kreun: I take my second back.

A voice vote was taken.
Motion carries.

Chair Unruh: We've got HB 1202 in front of us, passed out amendments .01001, **please see attachment #1.** The problem we've been trying to solve all session long boils down to one problem with one project with a 6-6 decision made by the Outdoor Heritage Fund being forwarded to the Industrial Commission, with no recommendation. We passed HB 1202 in the form it came from the House to solve that problem, saying there has to be a majority of the Outdoor Heritage Fund to make a recommendation to the Industrial Commission. I do feel that solves the problem, but taking that one step further, having an odd number of people on the board would clear that whole thing up. One piece I felt we were always missing on the Outdoor Heritage Fund was representation of our grazing lands; this amendment changes the OHF advisory board to consist of 13 members, it adds a member of the North Dakota grazing lands coalitions. There is a word missing here it should be grazing lands, we would add that in. I think that there is a place for another member from the agriculture community to represent that sector. I had reservations about changing the makeup of the board at this point. I express those concerns here, I think this should have been done earlier, but I also think it has come to light because of the problems we have been dealing with, this is a reasonable solution to the problems we've been having with the board.
As another alternative to that, (passed out second amendment .01003, **please see attachment #2**) I propose what I have wanted to see the board look like since it was created, and that is to make the OHF advisory board a 13 member board, and have five members from the agricultural community, two members from the energy industry, four members from the conservation community, one member from the business community and one member

from parks and rec; removing all of the language specific to specific organizations. This would remove the North Dakota Petroleum Council, the Lignite Energy Council, the Greater North Dakota Chamber, North Dakota Grain Growers, Stockman's Association, Farm Bureau, and Farmer's Union from being specifically listed in the century code to being more at-large groups that would have to lobby the governor for their place on the OHF board. I think this is better policy to have in century code, I understand it has quite the history, and I understand how we got here, but I think it's better policy to have the doors a little more open. We have two options, or we can leave the bill as is.

Vice-Chair Kreun: I am in agreement with the second option, it is more generic, we'll get better representation throughout the state, they can all apply the governor to make some of those decisions, he represents the whole state, it's up to him how he wants to put the group together. I'm in favor of the second one, .01003.

Senator Cook: My thought is that no matter what we do, we will see this same section of code being amended again next session. Should there be some times listed, when these appointments have to be made by, or is that in the law elsewhere?

Chair Unruh: I believe that is addressed elsewhere, the rotation of the membership.

Senator Cook: Is it conceivable that the whole board could change, all thirteen positions could change?

Chair Unruh: Based on these changes? We'll take a look.

Senator Roers: Is there any vetting process prior to these names being brought to the governor? It seems like a lot of people that the governor is supposed to go out and search the state of North Dakota to find representatives on his watch, rather than having some of the industries bring forward candidates.

Chair Unruh: I believe the people who would like to serve on the board have to fill out an application with the governor's office, then they are chosen through that system.

Andrea Pfennig, Deputy Executive Director, North Dakota Industrial Commission: That's correct, the law as written right now, certain groups are designated, those group make recommendations, and those members still have to go through the application process through the governor's office.

Senator Roers: With this second amendment taking out those specific groups, how do you see that happening now?

Andrea Pfennig: Currently we have the members that are appointed, they have varying ranges, so we have two members whose appointments will be expiring in June, replacements are being found for those. The others have varying ranges when their terms expire. Unless it's written other places, those members would keep their places until their term expires.

Senator Roers: If we take these out, how will you proceed a year from now to replace the members as their time expires and those specific industries are taken out?

Andrea Pfennig: I would assume that all of the stakeholders in those specific communities, such as the energy industry, would still go and select people that they want to have come forward, and they would still make applications. I am sure it would be open, anybody within that community could apply. It would be up to the governor's office.

Chair Unruh: It states in that section of code that each office of each member is 4 years, I do not think this would change any of that, they can't serve more than two consecutive terms. For example, if the Stockman's Association term was up, another person from the Ag community would be selected by the governor's office to fill one of those Ag spots.

Senator Cook: Do you think we ought to have some language that makes that clear?

Chair Unruh: I don't think that's necessary, but if the committee wishes to we could look at that and bring it up tomorrow.

Senator Piepkorn: For example, looking at amendment .01003, Ag has some specific organizations, energy has specific organizations, the conservation community does not have specific organizations named, correct? There are a lot of conservation groups that are going to be sorting that out and applying.

Chair Unruh: That's correct.

Senator Piepkorn: In energy, maybe the natural gas coalition could be applying for that, as opposed to just lignite or just oil.

Chair Unruh: That's correct.

Vice-Chair Kreun: I move to adopt the amendment ending in .01003.
Senator Roers: I second.

A voice vote was taken.
Motion carries.

Senator Schaible: I move do pass as amended.
Senator Roers: I second.

A roll call vote was taken.
Motion passes 6-0-0.

Vice-Chair Kreun will carry.

Chair Unruh: Closed committee work.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1202
4/11/2019
Job Number 34672

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to the recommendations of the North Dakota outdoor heritage advisory board.

Minutes: No Attachments

Chair Unruh: This came to us from the House as a bill to address how projects are approved by the Outdoor Heritage Fund, and then passed along to the Industrial Commission for approval, just requiring that a majority of members of the board have to be in favor of the project to avoid the situation that brought us all the OHF bills this session. We took some action on that and changed the membership of the board, hoghoused the bill into removing the names of all of the groups out of the century code, and then adding an additional agriculture member. I think there was only one person other than this committee that was happy with those changes, I think it would be wise to reconsider our actions. We have a do pass motion from Senator Schaible and a second from Senator Roers that would bring the bill back to committee for us to discuss.

Senator Schaible: I move to reconsider our actions on the do pass.
Senator Roers: I second.

A voice vote was taken.
Motion carries.

Chair Unruh: We have the amended version of the bill without a committee recommendation.

Senator Cook: I move to reconsider the amendment.
Vice-Chair Kreun: I second.

A voice vote was taken.
Motion carries.

Chair Unruh: We have the original version as it came to use from the House. This language was passed on the floor of the Senate yesterday. The House had hoghoused a bill, the final version that came to us, that I concurred on, had the exact same language that is in this bill.

Senator Cook: I move a Do Not Pass.
Vice-Chair Kreun: I second.

Senator Piepkorn: To clarify, this is an exact duplicate?

Chair Unruh: Correct.

Senator Roers: Didn't we add one more group to this list?

Chair Unruh: We had two amendments to consider, one added the grazing coalition to the membership of the board, we chose not to act on that one. The other one was to increase the membership by one agriculture position and take out all the names of all the other groups, that's the one we just reconsidered. Now we have the original.

Senator Roers: We don't have an additional member, so we still have the chance of deadlock?

Chair Unruh: If you take a look at the original language in this bill, it states that it has to be a majority of the members of the board, they have to be in favor of the project before they can pass it on to the Industrial Commission. The problem is solved by the bill that was passed on the floor yesterday. That's why we don't need this one.

Senator Cook: Where is the money for the OHF?

Chair Unruh: It's in the Industrial Commission budget.

Senator Piepkorn: I liked the amendments that we passed.

Chair Unruh: I can't disagree with you, but we are an elite group of people who like that concept. Maybe next time.

Senator Piepkorn: Not everybody in the room when we made these amendments disapproved of them.

A roll call vote was taken.
Motion passes 5-1-0.

Senator Schaible will carry.

Chair Unruh: Closed the meeting.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1202
4/16/2019
Job Number 34757

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to determinations of navigability, and relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Minutes: 1 Attachment

Chair Unruh: We had two bills on the calendar yesterday that were sent back to us to do a little shuffle work. We have HB 1202, which was the Outdoor Heritage Fund bill, we also have HB 1320, which had two parts to it, an original Red River Valley water supply piece, and it had the navigable waters issue. I have passed out amendments to HB 1202, they include all the navigable waters language that we had on the amendment to HB 1320. You can split HB 1320 into two pieces, what was in the original bill with Red River water supply, and then what was amended on with navigable waters. We're going to take that navigable waters issue and have a conversation about putting it on HB 1202. That would be amendment ending in .01006 (**Please see attachment #1**).

Senator Schaible: I move to reconsider our actions.
Senator Roers: I second.

A voice vote was taken.
Motion carries.

Senator Schaible: I move to adopt the amendment ending in .01006.
Vice-Chair Kreun: I second.

Senator Roers: Could I get a little clarification, we're taking this amendment and making it HB 1202?

Chair Unruh: It's the second half of HB 1320, which will go on HB 1202. It's the same amendment we passed out earlier. The other half of HB 1320 will be addressed in a conference committee later today.

A voice vote was taken.
Motion carries.

Senator Schaible: I move a Do Pass as amended.
Vice-Chair Kreun: I second.

A roll call vote was taken.
Motion passes 6-0-0.

Chair Unruh will carry.
Chair Unruh: Closed committee work.

8K
3/28
1:05

19.0176.01003
Title.02000

Prepared by the Legislative Council staff for
Senator Unruh
March 27, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 1, after "reenact" insert "subsection 1 of section 54-17.8-06 and"

Page 1, line 2, after the first "the" insert "membership and"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 1 of section 54-17.8-06 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created a North Dakota outdoor heritage advisory board consisting of ~~twelve~~thirteen members. The governor shall appoint representatives from each of the groups listed in this section ~~based upon recommendations made by the appropriate group~~. The advisory board consists of:

   a. ~~Four~~Five members from the agriculture community. ~~The governor shall appoint one member from the North Dakota farm bureau, North Dakota farmers union, the North Dakota stockmen's association, and the North Dakota grain growers association.~~

   b. Two members from the energy industry. ~~The governor shall appoint one member from the North Dakota petroleum council and one member from the lignite energy council.~~

   c. Four members from the conservation community. ~~The governor shall appoint the members from the conservation community at large of statewide conservation groups.~~

   d. One member from the business community ~~from the greater North Dakota chamber~~.

   e. One member from the North Dakota recreation and park association."

Renumber accordingly

SK
1203
4/16

19.0176.01006
Title.03000

Prepared by the Legislative Council staff for
Senator Unruh
April 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact sections 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.

2. "Board of university and school lands" means that entity created by section 15-01-01.

3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

~~4.~~5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

   a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

(1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

(2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

(3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

(4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

(5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

(6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 3. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, those determinations must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act."

Renumber accordingly

Date: 3/21
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Kreun

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

Date: 3/28
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Passes

Date: 3/28
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.0176.01003

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 Sen. Kreun Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion carries

Date: 3/28
Roll Call Vote #: 3

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.0176.01003

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 Sen. Schaible Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Kreun

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

Date: 4/11
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 ☐ _____
Do Pass Motion

Motion Made By Sen. Schaible Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Carries

Date: 4/11
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 Amendment ☐ _____

Motion Made By Sen. Cook Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Carries

Date: 4/11
Roll Call Vote #: 3

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 Sen. Cook Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn		X
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Schaible

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

Date: 4/16
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources 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 Sen. Schaible Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Carries

Date: 4/16
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.0176.01006

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 Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh			Senator Merrill Piepkorn		
Senator Curt Kreun					
Senator Donald Schaible					
Senator Dwight Cook					
Senator Jim Roers					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote

Motion Carries

Date: 4/16
Roll Call Vote #: 3

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.0176.01006

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 Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Unruh

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

REPORT OF STANDING COMMITTEE

HB 1202: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1202 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1202: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1202 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact sections 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.

2. "Board of university and school lands" means that entity created by section 15-01-01.

3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

~~4.~~5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

   a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

   b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

(1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

(2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

(3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

(4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

(5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

(6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 3. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed

to be above the ordinary high water mark and owned by the riparian landowner.

SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, those determinations must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act."

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1202

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

HB1202
4/22/2019
34882

☐ Subcommittee
☒ Conference Committee

Committee Clerk	Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the recommendations of the ND outdoor heritage advisory board

Minutes: Attachment 1

Chairman Lefor: asked the Senators to take the committee through the changes.

Sen. Unruh: presented Amendment 19.0176.01007 (with 2 hand written corrections inserted on middle of Section 4) as Attachment 1.

Chairman Lefor: which 4 bodies of water are we talking about being navigable? I can find out. I guess I have it. Missouri River, James River, Devils Lake, Painted Woods Lake, and Sweetwater Lake. What we're talking about are 11 bodies of water that have been determined by the State Engineer. That's what we're talking about. When the final report goes to the State Water Commission, the State Engineer has done his due diligence, public hearings and everything shown in this bill, then the final report goes to the State Water Commission. Do they then make the decision on that or has that already been made by the State Engineer?

Sen Unruh: That decision continues to be made by the State Engineer's office, not by the Water Commission. The Water Commission was inserted into the process to allow for elected officials and other appointed officials to become aware of the designation made by the State Engineer's office not to give approval or denial of those designations. I think that should be left up to technical experts not politics.

Chairman Lefor: With the amendment 3000 version the Senate passed, are those the only changes you're bringing forth?

Sen. Unruh: yes

Chairman Lefor: Regarding the fiscal note, my understanding would be there's potential for suits either way. So for at least 2 years, because they're determined by the State Engineer to be navigable they will be for 2 years unless he doesn't proceed with the new process then it will go back to how it was before. Is that correct?

Sen Unruh: Yes. While this fiscal note doesn't have a specific number on the front, would be a worst case scenario. I think the state is put in a far better position when making navigability determinations

to do that through a public process with additional research and allowing for those to stand in court far more than an internal process that doesn't include the surface owners from the area.

Rep. Zubke: Where the sentence says if the State Engineer elects not to begin review of any determination. Is there a timeline? If they begin reviewing does that extend the period of time that stream is deemed navigable? If the State Engineer does begin the review of that stream, does it extend the time period that stream stays navigable and can it go on indefinitely?

Sen Unruh: yes it would continue to stand as the State Engineer goes through the process. While there aren't specific timelines on how quickly they have to move through the process, that's why the Water Commission was inserted in the process in 2 different ways. The notification at the beginning of the process and then a report back on that navigability determination. These are hard to know how long they'll take and how much staff time is going to be available to make them. We wanted to give them flexibility for the State Engineer's office to complete the work on the rivers or steams they needed to, but also have the checks and balances there with the State Water Commission being involved in the process which is why we didn't have a specific timeline. Those could extend on longer than the upcoming biennium but as we all know we get to come back here once every 2 years. If we need to make changes, we could at that time.

I would move the Senate recede from Senate amendments and amend with the amendment I passed out, including the changes in version 07000, Sec. 4, insert the word, "begin review of" as indicated in the attachment.

Sen Schaible: second

Chairman Lefor: there's a motion and a second for the Senate recede from and amend. Discussion? Roll call vote: 6 yes, 0 no, 0 absent. Motion carried. Rep. Lefor and Sen. Unruh are carriers.

DD 4/22/19
1 of 3

19.0176.01008
Title.04000

Prepared by the Legislative Council staff for
the Conference Committee
April 22, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

That the Senate recede from its amendments as printed on pages 1893-1895 of the House Journal and pages 1636-1638 of the Senate Journal and that House Bill No. 1202 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.

2. "Board of university and school lands" means that entity created by section 15-01-01.

3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

~~4.~~5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

DP 4/22/19
2053

a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

(1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

(2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

(3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

(4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

(5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

(6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

DE 4/22/1
303

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 3. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to begin review of any determination of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, the determination must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act."

Renumber accordingly

Date: 4/22/2019
Roll Call Vote #: 1

2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1202 as (re) engrossed

House Energy and Natural Resources Committee

Action Taken
- ☐ **HOUSE accede to Senate Amendments**
- ☐ **HOUSE accede to Senate Amendments and further amend**
- ☐ **SENATE recede from Senate amendments**
- ☒ **SENATE recede from Senate amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen Unruh Seconded by: Sen Schaible

Representatives	4/22			Yes	No	Senators	4/22			Yes	No
Rep. Lefor	✓			✓		Sen Unruh	✓			✓	
Rep. Zubke	✓			✓		Sen Schaible	✓			✓	
Rep. Anderson	✓			✓		Sen Piepkorn	✓			✓	
Total Rep. Vote				3		Total Senate Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Lefor Senate Carrier Sen Unruh

LC Number 19.0176 . 01008 of amendment

LC Number . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Section 4, insert "begin review of" after, If the state engineer elects not to

Insert LC: 19.0176.01008
House Carrier: Lefor
Senate Carrier: Unruh

REPORT OF CONFERENCE COMMITTEE

HB 1202: Your conference committee (Sens. Unruh, Schaible, Piepkorn and Reps. Lefor, Zubke, D. Anderson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1893-1895, adopt amendments as follows, and place HB 1202 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1893-1895 of the House Journal and pages 1636-1638 of the Senate Journal and that House Bill No. 1202 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.

2. "Board of university and school lands" means that entity created by section 15-01-01.

3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

~~4.~~5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

   a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

   a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

      (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

      (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

      (3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

      (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

      (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

      (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

   b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 3. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to begin review of any determination of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, the determination must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act."

Renumber accordingly

HB 1202 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1202

HB 1202
3.28.19
#1
Pg.1

19.0176.01001
Title.

Prepared by the Legislative Council staff for
Senator Unruh
March 26, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 1, replace "subsection 6" with "subsections 1 and 6"

Page 1, line 2, after the first "the" insert "membership and"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 1 of section 54-17.8-06 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created a North Dakota outdoor heritage advisory board consisting of ~~twelve~~thirteen members. The governor shall appoint representatives from each of the groups listed in this section based upon recommendations made by the appropriate group. The advisory board consists of:

   a. ~~Four~~Five members from the agriculture community. The governor shall appoint one member from the North Dakota farm bureau, North Dakota farmers union, the North Dakota stockmen's association, North Dakota grazing coalition and the North Dakota grain growers association.

   b. Two members from the energy industry. The governor shall appoint one member from the North Dakota petroleum council and one member from the lignite energy council.

   c. Four members from the conservation community. The governor shall appoint the members from the conservation community at large of statewide conservation groups.

   d. One member from the business community from the greater North Dakota chamber.

   e. One member from the North Dakota recreation and park association."

Renumber accordingly

HB 1202
3.28.19
#2
Pg. 1

19.0176.01003
Title.

Prepared by the Legislative Council staff for
Senator Unruh
March 27, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 1, after "reenact" insert "subsection 1 of section 54-17.8-06 and"

Page 1, line 2, after the first "the" insert "membership and"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Subsection 1 of section 54-17.8-06 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created a North Dakota outdoor heritage advisory board consisting of ~~twelve~~thirteen members. The governor shall appoint representatives from each of the groups listed in this section ~~based upon recommendations made by the appropriate group~~. The advisory board consists of:

   a. ~~Four~~Five members from the agriculture community. ~~The governor shall appoint one member from the North Dakota farm bureau, North Dakota farmers union, the North Dakota stockmen's association, and the North Dakota grain growers association.~~

   b. Two members from the energy industry. ~~The governor shall appoint one member from the North Dakota petroleum council and one member from the lignite energy council.~~

   c. Four members from the conservation community. ~~The governor shall appoint the members from the conservation community at large of statewide conservation groups.~~

   d. One member from the business community ~~from the greater North Dakota chamber~~.

   e. One member from the North Dakota recreation and park association."

Renumber accordingly

HB 1202
4.16.19
#1
Pg. 1

19.0176.01006
Title.

Prepared by the Legislative Council staff for
Senator Unruh
April 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact sections 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

61-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.

2. "Board of university and school lands" means that entity created by section 15-01-01.

3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

~~4.~~ 5. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

SECTION 2. A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

   a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

(1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;

(2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

(3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

(4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

(5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

(6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the state engineer shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The state engineer shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.

4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

SECTION 3. AMENDMENT. Subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code is amended and reenacted as follows:

e. ~~Subsection 3 of section~~Section 61-33-01 and section 47-06-05, which provide all accretions are presumed to be above the ordinary high water mark and are not sovereign lands. Accreted lands may be determined to be within the ordinary high water mark of the historical Missouri riverbed channel based on clear and convincing evidence. Areas of low-lying and flat lands where the ordinary high water mark may be impracticable to determine due to inconclusive aerial photography or inconclusive vegetation analysis must be presumed to be above the ordinary high water mark and owned by the riparian landowner.

SECTION 4. REVIEWS OF NAVIGABILITY DETERMINATIONS DURING 2019-20 INTERIM. During the 2019-20 interim, the state engineer may review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act. However, if a court of competent jurisdiction has determined a body of water or portion of a body of water is navigable or non-navigable, the state engineer does not need to review any state agency determination regarding the body of water or portion of a body of water. If the state engineer elects not to review any determinations of navigability of a body of water or portion of a body of water made solely by the state engineer before the effective date of this Act during the 2019-20 interim, those determinations must be vacated without prejudice to a subsequent determination of navigability under section 2 of this Act. In conducting the reviews under this section, the state engineer shall comply with the requirements in section 2 of this Act."

Renumber accordingly

#1
4-22-19
HB 1202

19.0176.01007
Title.

Prepared by the Legislative Council staff for
Senator Unruh

April 19, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

That the Senate recede from its amendments as printed on pages 1893-1895 of the House Journal and pages 1636-1638 of the Senate Journal and that House Bill No. 1202 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact sections 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

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3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.

4. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.

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Navigability determinations.

1. Before making a determination that a body of water or portion of a body of water is navigable, the state engineer shall:

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a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and

b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.

2. After completing the requirements of subsection 1, the state engineer may proceed with making a final determination of navigability by:

a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:

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(2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;

(3) State the state engineer will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;

(4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;

(5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and

(6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and

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4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

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Renumber accordingly