

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2260

Introduced by

Senators Traynor, Thompson

Representatives D. Johnson, Kunkel

1 A BILL for an Act to create and enact a new section to chapter 61-03 of the North Dakota
2 Century Code, relating to removal, modification, or destruction of dangers in, on the bed of, or
3 adjacent to a navigable lake; to amend and reenact section 57-28-09 of the North Dakota
4 Century Code, relating to tax deeds issued to the state; and to declare an emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 61-03 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Removal, modification, or destruction of dangers in, on the bed of, or adjacent to**
9 **a navigable lake.**

- 10 1. If the state engineer finds that buildings, structures, boat docks, debris, or other
11 manmade objects, except a fence or corral, situated in, on the bed of, or adjacent
12 to a lake that has been determined to be navigable by a court are, or are
13 imminently likely to be, a menace to life or property or public health or safety, the
14 state engineer shall issue an order to the person responsible for the object. The
15 order must specify the nature and extent of the conditions, the action necessary to
16 alleviate, avert, or minimize the danger, and a date by which that action must be
17 taken. The person responsible is the person who owns or has control of the
18 property on which the object is located, or if the property is inundated with water,
19 the person who owned or had control of the property immediately before it became
20 inundated by water.
- 21 2. If the action is not taken by the date specified, but not less than twenty days from
22 the date of service of the notice, the state engineer may cause the action to be
23 taken. The state engineer may require the action to be taken in less than twenty
24 days if an emergency exists.

- 1 3. The state engineer may bring an action to enforce an order of the state engineer,
2 or if the state engineer causes the action to be taken, the state engineer may:
3 a. Assess the costs of taking such action, or such portion as the state engineer
4 determines, against any property of the person responsible; or
5 b. Bring a civil action against the person responsible to recover the costs
6 incurred in taking the action.

7 If the state engineer chooses to recover costs by assessing the cost against
8 property of the person responsible and the property is insufficient to cover the
9 costs incurred, the state engineer may bring a civil action to recover any costs not
10 recovered through the assessment process. Any assessments levied under this
11 section must be collected in the same manner as other real estate taxes are
12 collected and paid.

- 13 4. A person who receives an order, within ten days of the date of service of the order,
14 may demand, in writing, a hearing on the matter. The demand for a hearing must
15 state with particularity the issues, facts, and points of law to be presented at the
16 hearing. If the state engineer determines the issues, facts, and law to be
17 presented are well-founded and not frivolous, and the request for a hearing was
18 not made merely to interpose delay, the state engineer shall set a hearing date
19 without undue delay.

- 20 5. In the event of an emergency, the state engineer may immediately apply to the
21 district court of the county in which the property is located for an injunction ordering
22 the person responsible to modify, remove, abate, or otherwise eliminate the
23 dangerous condition.

- 24 6. Any person aggrieved by the action of the state engineer may appeal the decision
25 to the district court of the county in which the land is located in accordance with
26 chapter 28-32. A hearing as provided for in this section is a prerequisite to an
27 appeal unless the hearing was denied by the state engineer.

- 28 7. If the state engineer has issued an order under this section with regard to a
29 building, structure, boat dock, debris, or other manmade object that the state
30 engineer has determined is imminently likely to be a menace to life or property or
31 public health or safety, and it later becomes known that the object would not have

1 become a menace, a person who has taken action required by the state engineer's
2 order is entitled to compensation in an amount equal to the value of any property
3 destroyed and reasonable costs incurred as a result of complying with the state
4 engineer's notice.

5 8. Any person claiming compensation for the destruction of property or costs incurred
6 under subsection 7 must file a claim with the state engineer in the form and
7 manner required by the state engineer. Unless the amount of compensation is
8 agreed to between the claimant and the state engineer, the amount of
9 compensation must be calculated in the same manner as compensation due for
10 taking of property pursuant to the condemnation laws of this state. In determining
11 compensation, the proceeds of any flood or other insurance or any other kind of
12 compensatory payments must be subtracted from the amount paid.

13 **SECTION 2. AMENDMENT.** Section 57-28-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-28-09. Tax deed to be issued.** After the expiration of the period of redemption for
16 property that was sold to the county for taxes, and which has not been assigned or redeemed,
17 the county auditor shall issue a tax deed to the county, or in cases in which the state engineer
18 has made an assessment against the property under section 1 of this Act, the county auditor
19 shall issue a tax deed to the state. The tax deed passes the property in fee to the county or the
20 state, free from all encumbrances except installments of special assessments certified to the
21 county auditor or which may become due after the service of the notice of expiration of the
22 period of redemption and except for a homestead credit for special assessments lien provided
23 for in section 57-02-08.3. While the county or the state holds title under a tax deed, it is not
24 liable for the payment of any installments of special assessments which become due unless the
25 board of county commissioners or the state has leased or contracted to sell the property. A
26 deed issued under this section is prima facie evidence of the truth and regularity of all facts and
27 proceedings before the execution of the deed.

28 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.