

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1058

Introduced by

Legislative Council

(Government Organization Committee)

1 A BILL for an Act to create and enact a new section to chapter 23-01 of the North Dakota
2 Century Code, relating to the establishment of the environmental advisory board; to amend and
3 reenact sections 20.1-13-05, 23-25-02, 23-25-04, subsection 1 of section 54-07-01.2, and
4 sections 61-28-02, 61-28-05, and 61-28-07 of the North Dakota Century Code, relating to the
5 state water pollution control board; and to repeal section 61-28-03 of the North Dakota Century
6 Code, relating to the state water pollution control board.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 20.1-13-05 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **20.1-13-05. Equipment - Penalty.**

11 1. Every vessel must have aboard:

12 ~~4. to 3. Repealed by S.L. 1975, ch. 214, § 16.~~

13 ~~4. a.~~ If equipped with a marine toilet or other similar device for the disposition of
14 sewage or other wastes, only that type of marine toilet equipped with a
15 treatment device meeting standards established by the state ~~water pollution~~
16 ~~control board~~ department of health. The ~~board~~ department of health shall
17 furnish a list of the types of treatment devices currently available and
18 considered acceptable for use with marine toilets under this ~~subsection~~
19 subdivision. No person owning or operating a vessel upon the waters of this
20 state may use, operate, or permit the use or operation of any marine toilet or
21 similar device unless it is approved under this ~~subsection~~ subdivision. No
22 person may discharge into the waters of this state, directly or indirectly from a
23 vessel, any untreated sewage or other wastes. No container of untreated
24 sewage or other wastes may be placed, left, discharged, or caused to be

placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard, or pollute such waters.

~~5- b.~~ Such additional equipment designed to promote the safety of navigation and of persons as the game and fish department may find appropriate and for which it has provided in its rules ~~and regulations~~.

~~6- 2.~~ No person may operate or give permission for the operation of a vessel ~~which that~~ is not equipped as required by this section ~~or modification thereof~~.

~~7- 3.~~ Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 2. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Environmental advisory board. The environmental advisory board consists of the state health officer, the state engineer, the state geologist, and six members appointed by the governor. The state health officer, the state engineer, and the state geologist may appoint a designee to serve in the place of that individual. The members appointed by the governor must include a representative of city or county governments who is an elected official, a representative of the solid fuels industry, a representative of the fluid and gas fuels industry, a representative of the environmental sciences, a representative of the agricultural sector, and a representative of wildlife interests. The term of office of the appointed members is three years, except that two of the members first appointed must be appointed to terms of two years and two of the members first appointed must be appointed to terms of one year.

The board shall select one of its members as chairman. Members of the board shall serve without compensation, but are entitled to reimbursement from the state department of health for travel and other expenses incurred in the performance of their duties as provided in sections 44-08-04 and 54-06-09. The board shall hold joint public hearings with the department and advise the department regarding the adoption, amendment, or repeal of rules and standards relating to the quality of the air and waters of the state pursuant to chapters 23-25 and 61-28.

SECTION 3. AMENDMENT. Section 23-25-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-25-02. State air pollution control agency ~~—Advisory council.~~

- 1 4. The state department of health, hereinafter referred to as the department, is
2 hereby designated as the agency to administer and coordinate a statewide
3 program of air pollution control consistent with the provisions of this chapter.
- 4 2. ~~There is hereby established an air pollution control advisory council, hereinafter~~
5 ~~referred to as the advisory council, of nine members to include the state health~~
6 ~~officer, the state geologist, the director of the department of transportation, and six~~
7 ~~other members to be appointed by the governor, one of whom must be a~~
8 ~~representative of county or municipal government, one a representative of the solid~~
9 ~~fuels industry, one a representative of the fluid and gas fuels industry, one a~~
10 ~~representative of the environmental sciences, and two appointed at large.~~
- 11 3. ~~The term of office for the appointed members of the advisory council must be six~~
12 ~~years, but of those four first appointed, two shall serve for two years and two for~~
13 ~~four years, and the lengths of their terms must be designated by the governor at~~
14 ~~the time of appointment.~~
- 15 4. ~~The advisory council shall select its own chairman from among its members. The~~
16 ~~state health officer, state geologist, and director of the department of transportation~~
17 ~~each may designate a principal deputy or assistant to act in his place and stead.~~
18 ~~The chief sanitary engineer of the state department of health, or his designated~~
19 ~~assistant, must be the principal administrative officer of the council.~~
- 20 5. ~~The advisory council shall hold at least one regular meeting each year, and such~~
21 ~~additional meetings as the chairman deems necessary, at a time and place to be~~
22 ~~fixed by the chairman. Special meetings must be called by the chairman on the~~
23 ~~written request of any three members. Five members constitute a quorum.~~
- 24 6. ~~The advisory council shall hold a public hearing to consider and recommend the~~
25 ~~adoption, amendment, or repeal of rules, regulations, and standards as provided in~~
26 ~~this chapter. Notice of such public hearing or hearings must be given by~~
27 ~~publication of a notice of such hearing or hearings in each of the official county~~
28 ~~newspapers within the state of North Dakota by at least two publications, one week~~
29 ~~apart, the last publication being at least thirty days prior to the first hearing. The~~
30 ~~hearing or hearings must be held in the state capitol in Bismarck and interested~~
31 ~~parties may present witnesses and other evidence pertinent and relevant to~~

~~proposed rules, regulations, and standards. The advisory council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.~~

SECTION 4. AMENDMENT. Section 23-25-04 of the North Dakota Century Code is amended and reenacted as follows:

23-25-04. Classification and reporting of air pollution sources.

1. After consultation with the environmental advisory ~~council~~ board, the department, by rule ~~or regulation~~, may classify air contaminant sources according to levels and types of emissions and other criteria which relate to air pollution and may require reporting for any of such class ~~or classes~~. Classifications made pursuant to this subsection may apply to the state as a whole or to any designated area of the state and must be made with special reference to effects on health, economic, and social factors, and physical effects on property.
2. Any person operating or responsible for the operation of air contaminant sources of any class for which rules ~~and regulations~~ of the department require reporting shall make reports containing information as may be required by the department relevant to air pollution.

SECTION 5. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, ~~23-25-02~~, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, and 61-02-04, ~~and 61-28-03~~, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.

- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The board of pardons.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational telecommunications council.
- m. The state game and fish advisory board.
- n. The health council.
- o. ~~The air-pollution control~~ environmental advisory ~~council~~ board.
- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. ~~The state water pollution control board.~~

SECTION 6. AMENDMENT. Section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

61-28-02. Definitions. ~~For the purposes of~~ As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section unless the context otherwise requires:

- 1. "Board" means the ~~state water pollution control~~ environmental advisory board.
- 2. "Department" means the state department of health.
- 3. "Discharge" means the addition of any waste to state waters from any point source.

- 1 4. "Disposal system" means a system for disposing of wastes, either by surface or
2 underground methods, and includes sewerage systems, treatment works, disposal
3 wells, and other systems.
- 4 5. "Person" ~~means the state or any agency or institution thereof,~~ includes any
5 ~~municipality, political subdivision, public or private corporation, limited liability~~
6 ~~company, individual, partnership, association, any agency or instrumentality of the~~
7 ~~United States government,~~ or other public or private entity, and includes any officer
8 or governing or managing body of any ~~municipality, political subdivision, or public~~
9 ~~or private corporation~~ such entity.
- 10 6. "Point source" means any discernible, confined, and discrete conveyance,
11 including, ~~but not limited to,~~ any pipe, ditch, channel, tunnel, conduit, well, discrete
12 fissure, container, rolling stock, concentrated animal feeding operation, or vessel or
13 other floating craft, from which wastes are or may be discharged.
- 14 7. "Pollution" means the manmade or man-induced alteration of the physical,
15 chemical, biological, or radiological integrity of any waters of the state.
- 16 8. "Sewerage system" means pipelines or conduits, pumping stations, and force
17 mains, and all other structures, devices, appurtenances, and facilities used for
18 collecting or conducting wastes to an ultimate point for treatment or disposal.
- 19 9. "Treatment works" means any plant or other works used for the purpose of
20 treating, stabilizing, or holding wastes.
- 21 10. "Wastes" means all substances which cause or tend to cause pollution of any
22 waters of the state, including dredged spoil, solid waste, incinerator residue,
23 sewage, garbage, sewage sludge, munitions, chemical wastes, biological
24 materials, radiological materials, heat, wrecked or discarded equipment, rock,
25 sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged
26 into any waters of the state.
- 27 11. "Waters of the state" means all waters within the jurisdiction of this state including
28 all streams, lakes, ponds, impounding reservoirs, marshes, watercourses,
29 waterways, and all other bodies or accumulations of water on or under the surface
30 of the earth, natural or artificial, public or private, situated wholly or partly within or

bordering upon the state, except those private waters ~~which~~ that do not combine or effect a junction with natural surface or underground waters just defined.

SECTION 7. AMENDMENT. Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

61-28-05. Rules, ~~regulations~~, and standards. The department may adopt rules ~~and regulations~~ and, jointly with the ~~state water pollution control~~ board, shall hold public hearings ~~to consider~~ regarding the adoption, amendment, or repeal of rules, ~~regulations~~, and standards of quality of the waters of the state as provided in this chapter, ~~and notice of such public hearing or hearings shall be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least ten days prior to said hearing and which hearing shall be held in the state capitol in Bismarck, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards, and the state water pollution control board shall consider any other matters related to the purposes of this chapter and shall advise the department concerning the administration of this chapter.~~

SECTION 8. AMENDMENT. Section 61-28-07 of the North Dakota Century Code is amended and reenacted as follows:

61-28-07. Proceedings. Any proceeding under this chapter for:

1. ~~Issuance~~ issuance or modification of rules ~~and regulations~~, including emergency orders relating to control of water pollution; or
2. ~~Determining for determining~~ compliance with or violation ~~with the provisions~~ of this chapter, or adoption of any rule, ~~regulation~~, or order ~~issued thereunder~~ under this chapter by the department;

~~shall, must~~ be conducted in accordance with ~~the provisions of~~ chapter 28-32 ~~and any~~. Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule, ~~regulation~~, or order issued under this chapter may request a hearing by the department. There ~~shall be~~ is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department ~~may~~, without further notice or hearing, may issue an order reciting the existence of ~~such~~ the emergency and requiring that

1 such immediate action be taken as is necessary to meet this emergency. Notwithstanding ~~any~~
2 ~~provision of this chapter, such the order shall be~~ is effective immediately. Any person to whom
3 ~~such the order~~ is directed shall comply ~~therewith~~ immediately, but on application to the
4 department ~~shall~~ must be afforded a hearing before the department ~~and the state water~~
5 ~~pollution control board~~ within ten days. On the basis of ~~such that~~ that hearing, the emergency order
6 ~~shall~~ must be continued, modified, or revoked within thirty days after ~~such the~~ the hearing. In the
7 alternative, upon receipt of evidence that a pollution source or combination of sources is
8 presenting an imminent and substantial endangerment to the health of persons or to the welfare
9 of persons where ~~such the~~ the endangerment to welfare is to the livelihood of ~~such those~~ those persons,
10 the department may bring suit on behalf of the state in the district court for the county in which
11 the violation is taking place to immediately restrain any person causing or contributing to the
12 alleged pollution to stop the discharge of pollutants causing or contributing to ~~such the~~ the pollution,
13 or to take such other action as may be necessary.

14 **SECTION 9. REPEAL.** Section 61-28-03 of the North Dakota Century Code is
15 repealed.