

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2096

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new section to chapter 61-33 of the North Dakota
2 Century Code, relating to sovereign land management regulation violations; to amend and
3 reenact subsection 1 of section 20.1-02-15.1 and sections 61-03-21.3 and 61-33-05 of the
4 North Dakota Century Code, relating to powers of the game and fish department, dangers in
5 navigable waters, and powers of the state engineer; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-02-15.1 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. To enforce state laws and rules on any game refuge, game management area, or
10 other land or water owned, leased, or managed by the department and on
11 sovereign lands.

12 **SECTION 2. AMENDMENT.** Section 61-03-21.3 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or**
15 **adjacent to a navigable lake waters.**

16 1. If the state engineer finds that buildings, structures, boat docks, debris, or other
17 manmade objects, except a fence or corral, situated in, on the bed of, or adjacent
18 to ~~a lake~~ waters that ~~has~~ have been determined to be navigable ~~by a court~~ are, or
19 are imminently likely to be, a menace to life or property or public health or safety,
20 the state engineer shall issue an order to the person responsible for the object.
21 The order must specify the nature and extent of the conditions, the action
22 necessary to alleviate, avert, or minimize the danger, and a date by which that
23 action must be taken. If the state engineer determines that an object covered by
24 flood insurance is imminently likely to be a menace to life or property or public

1 health or safety, the date specified in the order for action to be taken may not
2 precede the date on which the person is eligible to receive flood insurance
3 proceeds. ~~The~~ If a building, structure, boat dock, debris, or other manmade object,
4 except a fence or corral, is partially or completely submerged due to the expansion
5 of navigable waters, the person responsible is the person who owns or ~~has had~~
6 control of the property on which the object is located; or if the property is inundated
7 with water, the person who owned or had control of the property immediately
8 before it became ~~inundated~~ submerged by water.

9 2. If the action is not taken by the date specified, but not less than twenty days from
10 the date of service of the notice, the state engineer may cause the action to be
11 taken. The state engineer may require the action to be taken in less than twenty
12 days if an emergency exists.

13 3. The state engineer may bring an action to enforce an order of the state engineer,
14 or if the state engineer causes the action to be taken, the state engineer may:
15 a. Assess the costs of taking such action, or such portion as the state engineer
16 determines, against any property of the person responsible; or
17 b. Bring a civil action against the person responsible to recover the costs
18 incurred in taking the action.

19 If the state engineer chooses to recover costs by assessing the cost against
20 property of the person responsible and the property is insufficient to cover the
21 costs incurred, the state engineer may bring a civil action to recover any costs not
22 recovered through the assessment process. Any assessments levied under this
23 section must be collected in the same manner as other real estate taxes are
24 collected and paid. Any costs recovered must be deposited in the fund from which
25 the expenses were paid.

26 4. A person who receives an order, within ten days of the date of service of the order,
27 may demand, in writing, a hearing on the matter. The demand for a hearing must
28 state with particularity the issues, facts, and points of law to be presented at the
29 hearing. If the state engineer determines the issues, facts, and law to be
30 presented are well-founded and not frivolous, and the request for a hearing was

not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.

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

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

7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is imminently likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.

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

SECTION 3. AMENDMENT. Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

61-33-05. Duties and powers of the state engineer. The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name;

1 may issue and enforce administrative orders and recover the cost of the enforcement from the
2 party against which enforcement is sought; and may make and execute all instruments of
3 release or conveyance as may be required pursuant to agreements made with respect to such
4 assets, whether such agreements were made heretofore, or are made hereafter. The state
5 engineer may enter agreements with the game and fish department or other law enforcement
6 entities to enforce this chapter and rules adopted under this chapter.

7 **SECTION 4.** A new section to chapter 61-33 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Penalty.** A person who violates this chapter or any rule implementing this chapter is
10 guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be
11 imposed by a court in a civil proceeding or by the state engineer through an adjudicative
12 proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the
13 imposition of other sanctions authorized by law, this chapter, or rules adopted under this
14 chapter. The state engineer may bring a civil action to recover damages resulting from
15 violations and may also recover any costs incurred.