

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1107

Introduced by

Energy and Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05,
2 and section 61-04-05.1 of the North Dakota Century Code, relating to definitions and
3 informational and adjudicative hearings on a water permit application.

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

5 **SECTION 1. AMENDMENT.** Section 61-04-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-04-01.1. Definitions.**

8 In this chapter, unless the context or subject matter otherwise requires:

- 9 1. "Adjudicative hearing" means an administrative proceeding under chapter 28-32 that
10 provides for an appeal of a recommended decision prepared by the state engineer for
11 a water permit application.
- 12 2. "Beneficial use" means a use of water for a purpose consistent with the best interests
13 of the people of the state.
- 14 2.3. "Commission" means the state water commission.
- 15 3.4. "Domestic use" means the use of water by an individual, or by a family unit, or
16 household, for personal needs and for household purposes, including heating,
17 drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five
18 acres [2.0 hectares] in area for ~~noncommercial~~ gardens, orchards, lawns, trees, or
19 shrubbery; and for household pets and domestic animals kept for household
20 sustenance and not for sale or commercial use, when the water is supplied by the
21 individual or family unit. Also included within this use are "domestic rural uses" which
22 must be defined by the state engineer by rule.

1 ~~4.5.~~ "Fish, wildlife, and recreation" means the use of water for the purposes of propagating
2 and sustaining fish and wildlife resources and for the development and maintenance of
3 water areas necessary for outdoor recreation activities.

4 ~~5.6.~~ "Industrial use" means the use of water for the furtherance of a commercial enterprise
5 wherever located, including manufacturing, mining, or processing.

6 ~~6.7.~~ "Informational hearing" means an administrative proceeding that provides all
7 interested persons an opportunity to present oral or written comments on a water
8 permit application.

9 ~~8.~~ "Irrigation use" means the use of water for application to more than five acres
10 [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens,
11 orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as
12 athletic fields, golf courses, parks, and similar types of areas, except when the water
13 for the facility is provided by a municipal water system.

14 ~~7.9.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or
15 bands of animals kept for commercial purposes.

16 ~~8.10.~~ "Municipal or public use" means the use of water by the state through its political
17 subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by
18 unincorporated communities, subdivision developments, rural water systems, and
19 other entities, whether supplied by the government or by a privately owned public
20 utility or other agency or entity, for primarily domestic purposes, as defined herein.

21 ~~9.11.~~ "Person" includes political subdivisions, corporations, limited liability companies,
22 partnerships, associations, the United States and its departments or agencies, the
23 state of North Dakota and its departments or agencies, and any other legal entity.

24 ~~10.12.~~ "Rural water system" means a water supply system designed to serve regional needs.

25 ~~11.13.~~ "Water of the state" or "waters of the state" means those waters identified in section
26 61-01-01.

27 **SECTION 2. AMENDMENT.** Subsection 5 of section 61-04-05 of the North Dakota Century
28 Code is amended and reenacted as follows:

29 5. The notice must give all essential facts as to the proposed appropriation, including the
30 places of appropriation and of use, amount of water, the use, the name and address of
31 the applicant, and the date by which written comments and requests for an

1 informational hearing regarding the proposed appropriation must be filed with the state
2 engineer. The notice must also state that anyone who files written comments with the
3 state engineer will be mailed a copy of the state engineer's recommended decision on
4 the application.

5 **SECTION 3. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-04-05.1. Comments - Hearing.**

8 1. Comments regarding a proposed appropriation must be in writing and filed by the date
9 specified by the state engineer under subsection 5 of section 61-04-05. The comments
10 must state the name and address of the person filing the comments.

11 2. A person filing written comments may also request an informational hearing on the
12 application by the date specified by the state engineer under subsection 5 of section
13 61-04-05. If a request for an informational hearing is made and if the state engineer
14 determines an informational hearing is necessary to obtain additional information to
15 evaluate the application or to receive public input, the state engineer shall designate a
16 time and place for the informational hearing and serve a copy of the notice of hearing
17 upon the applicant and any person who filed written comments. Service must be
18 made in the manner allowed for service under the North Dakota Rules of Civil
19 Procedure at least twenty days before the hearing.

20 3. If two or more municipal or public use water facilities request the informational hearing
21 to be held locally, the state engineer shall hold the hearing in the county seat of the
22 county in which the proposed water appropriation site is located.

23 4. The state engineer shall consider all written comments received and testimony
24 presented at an informational hearing, if held, and shall recommend in writing approval
25 or disapproval of the application or that the application be held in abeyance. A copy of
26 the recommended decision must be mailed to the applicant and any person who filed
27 written comments.

28 ~~3-5.~~ Within thirty days of service of the recommended decision, the applicant and any
29 person who would be aggrieved by the decision and who filed written comments by
30 the date specified under subsection 5 of section 61-04-05 may file additional written
31 comments with the state engineer or request ~~aan~~ an adjudicative hearing on the

1 application, or both. A request for aan adjudicative hearing must be made in writing
2 and must state with particularity how the person would be aggrieved by the decision
3 and the issues and facts to be presented at the adjudicative hearing. If a request for
4 aan adjudicative hearing is not made, the state engineer shall consider the additional
5 comments, if any are submitted, and issue a final decision. If a request for aan
6 adjudicative hearing is made, ~~or if the state engineer determines a hearing is~~
7 ~~necessary to obtain additional information to evaluate the application or to receive~~
8 ~~public input~~, the state engineer shall designate a time and place for the adjudicative
9 hearing and serve a copy of the notice of hearing upon the applicant and any person
10 who filed written comments. Service must be made in the manner allowed for service
11 under the North Dakota Rules of Civil Procedure at least twenty days before the
12 hearing.

- 13 4. ~~If two or more municipal or public use water facilities request the hearing to be held~~
14 ~~locally, the state engineer shall hold the hearing in the county seat of the county in~~
15 ~~which the proposed water appropriation site is located.~~