

Testimony
House Bill 1076 – Department of Water Resources
House Energy and Natural Resources Committee
Representative Todd Porter, Chairman
January 12, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee – I am Aaron Carranza, Regulatory Division Director of the Department of Water Resources (Department). I am here today to provide you an overview of the House Bill No. 1076, which proposes to amend portions of North Dakota Century Code section 61-16.1-38, relating to the Department's authority over permitting requirements for dikes. This bill is part of the governor's overall red-tape reduction initiative by proposing to remove unnecessary application requirements.

North Dakota Century Code section 61-16.1-38, often referred to as the Department's construction permit statute, requires a permit for the construction or modification of a dam, dike, or other device. Applications for these permits, as well as complaints related to these structures, are reviewed by both the Department and county water resource districts. In recent years, the Department has identified a few areas within this statute that may be opportunities to deregulate and add clarity. Specifically, those areas are:

1. The permit threshold for a dike or levee is very technical to calculate for permit applicants; and
2. The permit requirements for all dikes are generally the same given the construction permit statute does not differentiate regulation between dike types.

In other words, the current statute is best described as a "one-size-fits-all" approach, which makes it difficult for the Department to differentiate permitting requirements between different types of dike systems, such as dikes in the City of Fargo versus an agricultural edge-of-field dike, for example.

Additionally, the current statute's permitting threshold for all dikes is based upon a "volume protected" approach, which is difficult for potential applicants and the general public to understand given it is not easily quantifiable by non-technical persons.

The Department seeks to resolve these problem areas by creating a tiered regulatory framework for dikes. Such a tiered framework would base minimum permit application requirements upon what the dike is protecting, not a specified volume. To accomplish this, the Department proposes some deregulation of agricultural dikes and farmstead ring dikes. This creates more equity for agricultural producers and rural property owners' dikes given those dike systems have fewer public safety considerations. House Bill 1076 does this by:

1. Eliminating the requirement for a professional engineer for the construction of an agricultural dike or farmstead ring dike;
2. Increasing the threshold for requiring a construction permit for an agricultural dike; and
3. Requiring construction permits for construction of municipal dikes if they are protecting residences or occupied structures, without respect to a volume protected.

Specifically, House Bill 1076 will eliminate the current "volume protected" or "one-size-fits-all" permitting threshold of 50 acre-feet or more for all dikes and replace it with a targeted "80 acres or more protected area" permitting threshold for agricultural dikes only. House Bill 1076 will also lessen the requirement for engineering services by eliminating the current requirement for a professional engineer to design agricultural dikes and farmstead ring dikes.

House Bill 1076 will harvest the time savings from the above deregulations to prioritize the review of applications for dikes that are intended to protect people or public infrastructure.

There are no proposed changes to the existing construction permit process with House Bill 1076, but if successful, these proposed changes to the construction permit statute will afford the Department the ability to better target permitting requirements for dikes based upon public safety and water management considerations. House Bill 1076 does not propose to amend the permit thresholds for dams.

The Department believes these changes will make the permitting process for dikes more transparent for the general public and will also help Department staff and county water resource districts more equitably regulate dikes with respect to public safety and water management considerations.

If you wish to know how our agency would adopt definitions regarding agricultural dikes, farmstead ring dikes, or farmsteads, I provided a document that includes draft definitions based upon existing definitions in North Dakota Administrative Code chapters 89-05-01 and 89-08-01. The Department's intent would be to codify these definitions in Administrative Code if House Bill 1076 is successful. I also included a flow-chart that depicts how the permitting requirements would be determined under this proposal.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.