

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 section 61-03-21.3 of the North Dakota Century Code, relating to dangers in navigable
4 waters; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 61-03-21.3 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or**
9 **adjacent to a navigable ~~lake~~ waters.**

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 waters~~ that ~~has~~ have been determined to be navigable ~~by a court~~ are, or
13 are imminently likely to be, a menace to life ~~or~~, property ~~or~~, public health or safety,
14 or the environment, the state engineer shall issue an order to the person
15 responsible for the object. The order must specify the nature and extent of the
16 conditions, the action necessary to alleviate, avert, or minimize the danger, and a
17 date by which that action must be taken. If the state engineer determines that an
18 object covered by flood insurance is imminently likely to be a menace to life ~~or~~,
19 property ~~or~~, public health or safety, or the environment, the date specified in the
20 order for action to be taken may not precede the date on which the person is
21 eligible to receive flood insurance proceeds. ~~The~~ If a building, structure, boat dock,
22 debris, or other manmade object, except a fence or corral, is partially or completely
23 submerged due to the expansion of navigable waters, the person responsible is the
24 person who owns or ~~has~~ had control of the property on which the object is located;

- 1 or ~~if the property is inundated with water~~, the person who owned or had control of
2 the property immediately before it became ~~inundated~~ submerged by water.
- 3 2. If the action is not taken by the date specified, but not less than twenty days from
4 the date of service of the notice, the state engineer may cause the action to be
5 taken. The state engineer may require the action to be taken in less than twenty
6 days if an emergency exists.
- 7 3. The state engineer may bring an action to enforce an order of the state engineer,
8 or if the state engineer causes the action to be taken, the state engineer may:
- 9 a. Assess the costs of taking such action, or such portion as the state engineer
10 determines, against any property of the person responsible; or
- 11 b. Bring a civil action against the person responsible to recover the costs
12 incurred in taking the action.
- 13 If the state engineer chooses to recover costs by assessing the cost against
14 property of the person responsible and the property is insufficient to cover the
15 costs incurred, the state engineer may bring a civil action to recover any costs not
16 recovered through the assessment process. Any assessments levied under this
17 section must be collected in the same manner as other real estate taxes are
18 collected and paid. Any costs recovered must be deposited in the fund from which
19 the expenses were paid.
- 20 4. A person who receives an order, within ten days of the date of service of the order,
21 may demand, in writing, a hearing on the matter. The demand for a hearing must
22 state with particularity the issues, facts, and points of law to be presented at the
23 hearing. If the state engineer determines the issues, facts, and law to be
24 presented are well-founded and not frivolous, and the request for a hearing was
25 not made merely to interpose delay, the state engineer shall set a hearing date
26 without undue delay.
- 27 5. In the event of an emergency, the state engineer may immediately apply to the
28 district court of the county in which the property is located for an injunction ordering
29 the person responsible to modify, remove, abate, or otherwise eliminate the
30 dangerous condition.

- 1 6. Any person aggrieved by the action of the state engineer may appeal the decision
2 to the district court of the county in which the land is located in accordance with
3 chapter 28-32. A hearing as provided for in this section is a prerequisite to an
4 appeal unless the hearing was denied by the state engineer.
- 5 7. If the state engineer has issued an order under this section with regard to a
6 building, structure, boat dock, debris, or other manmade object that the state
7 engineer has determined is imminently likely to be a menace to life or property or,
8 public health or safety, or the environment, and it later becomes known that the
9 object would not have become a menace, a person who has taken action required
10 by the state engineer's order is entitled to compensation in an amount equal to the
11 value of any property destroyed and reasonable costs incurred as a result of
12 complying with the state engineer's notice.
- 13 8. Any person claiming compensation for the destruction of property or costs incurred
14 under subsection 7 must file a claim with the state engineer in the form and
15 manner required by the state engineer. Unless the amount of compensation is
16 agreed to between the claimant and the state engineer, the amount of
17 compensation must be calculated in the same manner as compensation due for
18 taking of property pursuant to the condemnation laws of this state. In determining
19 compensation, the proceeds of any flood or other insurance or any other kind of
20 compensatory payments must be subtracted from the amount paid.

21 **SECTION 2.** A new section to chapter 61-33 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Penalty.** A person who violates this chapter or any rule implementing this chapter is
24 guilty of a class B misdemeanor and is subject to a civil penalty not to exceed one thousand
25 dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or
26 by the state engineer through an adjudicative proceeding pursuant to chapter 28-32. The
27 assessment of a civil penalty does not preclude the imposition of other sanctions authorized by
28 law, this chapter, or rules adopted under this chapter. The state engineer may bring a civil
29 action to recover damages resulting from violations and may also recover any costs incurred.