

HOUSE BILL NO. 1209

Introduced by

Representatives Kempenich, Brandenburg, Jones, Steiner, Zubke

Senators Bekkedahl, Cook

1 A BILL for an Act to create and enact chapter 23-01.4 of the North Dakota Century Code,
2 relating to the establishment of a department of environmental quality to assume certain powers
3 and duties of the state department of health; to amend and reenact sections 23-20-03,
4 23-20-04, and 23-20-05, subsection 3 of section 23-20.1-01, section 23-20.1-02, subsection 2
5 of section 23-20.3-02, sections 23-25-01 and 23-25-02, subsection 4 of section 23-25-03.3,
6 subsection 2 of section 23-26-02, subsection 2 of section 23-29-03, subsection 3 of section
7 23-29.1-02, sections 23-31-01, 23-31-02, 23-31-03, and 23-33-02, subsection 7 of section
8 23-37-02, section 61-04.1-04, subsection 2 of section 61-28-02, subsection 1 of section
9 61-28-03, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2
10 of section 61-28.2-01, section 61-29-04, subsection 1 of section 61-33-09, and section 61-38-03
11 of the North Dakota Century Code, relating to transferring certain powers and duties from the
12 state department of health to a department of environmental quality; and to repeal section
13 23-01-04.1 of the North Dakota Century Code, relating to environmental quality regulations.

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

15 **SECTION 1.** Chapter 23-01.4 of the North Dakota Century Code is created and enacted as
16 follows:

17 **23-01.4-01. Definitions.**

18 For purposes of this chapter, unless the context otherwise requires:

- 19 1. "Department" means the department of environmental quality.
20 2. "Director" means the director of the department.

21 **23-01.4-02. Department of environmental quality - Purpose.**

22 The department of environmental quality shall administer and oversee programs relating to
23 air quality, water quality, waste management, and other programs relating to environmental
24 health in the state.

1 **23-01.4-03. Director - Power and duties.**

2 The governor shall appoint the director who shall serve as the chief administrative officer of
3 the department with the following powers and duties:

- 4 1. To manage the operations of the department.
- 5 2. To hire personnel to carry out the duties of the department.
- 6 3. To take actions, including adopting rules and executing contracts, necessary to carry
7 out environmental health programs in the state, and implement the laws with which the
8 department is charged.

9 **23-01.4-04. Rulemaking to administer federal law.**

- 10 1. Except as provided in subsection 2, the department may not adopt any rule for the
11 purpose of the state administering a program under the federal Clean Air Act, federal
12 Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and
13 Recovery Act, federal Comprehensive Environmental Response, Compensation and
14 Liability Act, federal Emergency Planning and Community Right to Know Act of 1986,
15 federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, which is
16 more stringent than corresponding federal regulations that address the same
17 circumstances.
- 18 2. The department may adopt rules more stringent than corresponding federal
19 regulations or adopt rules where there are no corresponding federal regulations, for
20 the purposes described in subsection 1, only if the department makes a written finding
21 after public comment and hearing and based upon evidence in the record that
22 corresponding federal regulations are not adequate to protect public health and the
23 environment of the state. The findings must be supported by an opinion of the
24 department referring to and evaluating the public health and environmental information
25 and studies contained in the record which form the basis for the department's
26 conclusions.
- 27 3. If the department, upon petition by any person affected by a rule of the department,
28 identifies rules more stringent than federal regulations or rules where there are no
29 corresponding federal regulations, the department shall review and revise those rules
30 to comply with this section within nine months of the filing of the petition.

1 4. Any person who is issued a notice of violation, or a denial of a permit or other
2 approval, based upon a rule of the department which is more stringent than a
3 corresponding federal regulation or where there is no corresponding federal
4 regulation, may assert a partial defense to that notice, or a partial challenge to that
5 denial, on the basis and to the extent the department's rule violates this section by
6 imposing requirements more stringent than corresponding federal regulations, unless
7 the more stringent rule of the department has been adopted in compliance with this
8 section.

9 5. This section does not require the department to review and propose revisions to any
10 existing rule regarding the collection of fees by the department in connection with the
11 administration of any program identified in subsection 1.

12 **SECTION 2. AMENDMENT.** Section 23-20-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **23-20-03. Registration agency.**

15 The ~~state~~ department of ~~health~~environmental quality is hereby designated as the agency to
16 receive registration applications and to issue certificates of registration.

17 **SECTION 3. AMENDMENT.** Section 23-20-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **23-20-04. Registration required.**

20 Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic,
21 manufacturing establishment, research or educational institution, agricultural experiment station
22 or center, processing mill, or other institution or place of business or process where radiation is
23 produced or radioactive materials are used, manufactured, processed, packaged, refined,
24 produced, disposed, or concentrated shall register with the state department of
25 ~~health~~environmental quality. The state mine inspector shall register with the state department of
26 ~~health~~environmental quality any mine ~~which~~that is producing or has produced radioactive
27 substances. ~~It is the duty of each~~The manager or officer in charge of any institution or
28 establishment concerned with radioactive materials ~~as described herein to make written~~
29 ~~applications~~shall apply to the ~~state health officer~~director of the department of environmental
30 quality for a registration form.

1 **SECTION 4. AMENDMENT.** Section 23-20-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23-20-05. Certificate of registration.**

4 Upon satisfactory completion and submission of the registration form supplying the required
5 information to determine whether the health of the public or ~~persons~~individuals working in such
6 establishments may be adversely affected by using, manufacturing, processing, packing,
7 refining, disposing, producing, or concentrating of such radioactive isotopes and materials, the
8 ~~state health officer~~director of the department of environmental quality shall issue the applicant a
9 certificate of registration.

10 **SECTION 5. AMENDMENT.** Subsection 3 of section 23-20.1-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 3. "Department" means state department of ~~health~~environmental quality.

13 **SECTION 6. AMENDMENT.** Section 23-20.1-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23-20.1-02. State radiation control agency.**

16 The ~~state department of health is hereby designated~~shall to administer the statewide
17 licensing and regulatory radiation program, consistent with ~~the provisions of~~ this chapter.

18 **SECTION 7. AMENDMENT.** Subsection 2 of section 23-20.3-02 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 2. "Department" means the ~~state~~ department of ~~health~~environmental quality charged with
21 the administration and enforcement of this chapter.

22 **SECTION 8. AMENDMENT.** Section 23-25-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23-25-01. Definitions.**

25 For purposes of this chapter, the following words and phrases are defined:

26 1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any
27 combination thereof.

28 2. "Air pollution" means the presence in the outdoor atmosphere of one or more air
29 contaminants in such quantities and duration as is or may be injurious to human
30 health, welfare, or property, animal or plant life, or which unreasonably interferes with
31 the enjoyment of life or property.

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- 1 3. "Air quality standard" means an established concentration, exposure time, or
2 frequency of occurrence of a contaminant or multiple contaminants in the ambient air
3 which may not be exceeded.
- 4 4. "Ambient air" means the surrounding outside air.
- 5 5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or
6 construction activity which involves the repair, enclosure, encapsulation, removal,
7 handling, or disposal of more than three square feet [0.28 square meter] or three linear
8 feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any
9 inspections, preparation of management plans, and abatement project design for both
10 friable and nonfriable asbestos material.
- 11 6. "Asbestos contractor" means any partnership, firm, association, corporation, limited
12 liability company, or sole proprietorship that contracts to perform asbestos abatement
13 for another.
- 14 7. "Asbestos worker" means any person engaged in the abatement of more than three
15 square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos
16 material, except for individuals engaged in abatement at their private residence.
- 17 8. "Department" means the department of environmental quality.
- 18 9. "Emission" means a release of air contaminants into the ambient air.
- 19 9-10. "Emission standard" means a limitation on the release of any air contaminant into the
20 ambient air.
- 21 40-11. "Friable asbestos material" means any material containing more than one percent
22 asbestos that hand pressure or mechanical forces expected to act on the material can
23 crumble, pulverize, or reduce to powder when dry.
- 24 44-12. "Indirect air contaminant source" means any facility, building, structure, or installation,
25 or any combination thereof, which can reasonably be expected to cause or induce
26 emissions of air contaminants.
- 27 42-13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or
28 in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.
- 29 43-14. "Person" means any individual, corporation, limited liability company, partnership, firm,
30 association, trust, estate, public or private institution, group, agency, political

1 subdivision of this state, any other state or political subdivision or agency thereof, and
2 any legal successor, representative agency, or agency of the foregoing.

3 **SECTION 9. AMENDMENT.** Section 23-25-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23-25-02. State air pollution control agency - Advisory council.**

6 1. The ~~state department of health, hereinafter referred to as the department, is hereby~~
7 ~~designated as the agency to~~ shall administer and coordinate a statewide program of
8 air pollution control consistent with the ~~provisions of this chapter.~~

9 2. There is hereby established an air pollution control advisory council, hereinafter
10 referred to as the advisory council, of nine members to include the ~~state health-~~
11 ~~officer~~director of the department, the state geologist, the director of the department of
12 transportation, and six other members to be appointed by the governor, one of whom
13 must be a representative of county or municipal government, one a representative of
14 the solid fuels industry, one a representative of the fluid and gas fuels industry, one a
15 representative of the environmental sciences, and two appointed at large.

16 3. The term of office for the appointed members of the advisory council must be six
17 years, but of those four first appointed, two shall serve for two years and two for four
18 years, and the lengths of their terms must be designated by the governor at the time of
19 appointment.

20 4. The advisory council shall select its ~~own~~ chairman from among its members. The ~~state~~
21 ~~health officer~~director of the department, state geologist, and director of the department
22 of transportation each may designate a principal deputy or assistant to act in the
23 officer's place and stead. ~~The chief sanitary engineer of the state department of health,~~
24 ~~or that officer's designated assistant, must be the principal administrative officer of the~~
25 ~~council.~~

26 5. The advisory council shall hold at least one regular meeting each year, and such
27 additional meetings as the chairman deems necessary, at a time and place to be fixed
28 by the chairman. Special meetings must be called by the chairman on the written
29 request of any three members. Five members constitute a quorum.

30 6. The advisory council shall hold a public hearing to consider and recommend the
31 adoption, amendment, or repeal of rules, ~~regulations,~~ and standards as provided in

1 this chapter. Notice of ~~such~~any public hearing ~~or hearings~~ must be given by
2 publication of ~~a notice of such hearing or hearings~~ in each of the official county
3 newspapers within the state of ~~North Dakota~~ by at least two publications, one week
4 apart, the last publication being at least thirty days ~~prior to~~before the first hearing. The
5 hearing ~~or hearings~~ must be held in the state capitol in ~~Bismarek~~ and interested parties
6 may present witnesses and other evidence pertinent and relevant to proposed rules,
7 ~~regulations~~, and standards. The advisory council shall consider any other matters
8 related to the purposes of this chapter and may make recommendations ~~on its own~~
9 ~~initiative~~ to the department concerning the administration of this chapter.

10 **SECTION 10. AMENDMENT.** Subsection 4 of section 23-25-03.3 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 4. This section applies to any petition submitted to the department pursuant to section
13 ~~23-01-04.1 that~~23-01.4-04 which identifies air quality rules or standards affecting coal
14 conversion facilities or petroleum refineries ~~that~~which are more strict than federal rules
15 or standards under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no
16 corresponding federal rules or standards, regardless of whether the department has
17 previously adopted the more strict or additional rules or standards pursuant to section
18 ~~23-01-04.1~~23-01.4-04. This section also applies to any petitions filed under section
19 ~~23-01-04.1~~23-01.4-04 affecting coal conversion facilities or petroleum refineries that
20 are pending on the effective date of this section for which new rules or standards have
21 not been adopted, and the department shall have a reasonable amount of additional
22 time to comply with the more stringent requirements of this section. To the extent
23 section ~~23-01-04.1~~23-01.4-04 conflicts with this section, the provisions of this section
24 govern. This section does not apply, ~~however~~, to existing rules that set air quality
25 standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission
26 standards for particulate matter and sulfur dioxide, but does apply to any new rules
27 governing such matters.

28 **SECTION 11. AMENDMENT.** Subsection 2 of section 23-26-02 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 2. "Department" means the ~~state~~ department of ~~health~~environmental quality.

1 **SECTION 12. AMENDMENT.** Subsection 2 of section 23-29-03 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. "Department" means the ~~state~~ department of ~~health~~environmental quality.

4 **SECTION 13. AMENDMENT.** Subsection 3 of section 23-29.1-02 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 3. "Department" means the ~~state~~ department of ~~health~~environmental quality.

7 **SECTION 14. AMENDMENT.** Section 23-31-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **23-31-01. Environmental emergency cost recovery.**

10 Except as provided in section 23-20.3-11, the ~~state~~ department of ~~health~~environmental
11 quality may recover from the parties responsible for an environmental emergency the
12 reasonable and necessary state costs incurred in assessment, removal, corrective action, or
13 monitoring as a result of an environmental emergency in violation of chapter 23-20.1, 23-20.3,
14 23-25, 23-29, 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a
15 release into the environment of a substance requiring an immediate response to protect public
16 health or welfare or the environment from an imminent and substantial endangerment and
17 which is in violation of chapter 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and
18 "reasonable and necessary costs" means those costs incurred by the department as a result of
19 the failure of the parties responsible for the environmental emergency to implement appropriate
20 assessment and corrective action after receipt of written notice from the department. If
21 assessment, removal, monitoring, or corrective action must be initiated prior to identification of
22 the responsible parties, the department may assess those prior costs to the responsible parties
23 at the time they are identified.

24 **SECTION 15. AMENDMENT.** Section 23-31-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **23-31-02. Environmental quality restoration fund.**

27 There is established an environmental quality restoration fund into which the funds
28 recovered in this chapter may be deposited. The fund is to be administered by the ~~state-~~
29 ~~department of health~~environmental quality and may be used ~~by the state department of health-~~
30 for costs of environmental assessment, removal, corrective action, or monitoring as determined
31 on a case-by-case basis.

1 **SECTION 16. AMENDMENT.** Section 23-31-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23-31-03. Rules adoption.**

4 The state department of ~~health~~environmental quality may adopt rules to implement this
5 chapter.

6 **SECTION 17. AMENDMENT.** Section 23-33-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-33-02. Administration of chapter.**

9 The state department of ~~health~~environmental quality shall administer this chapter. For
10 purposes of this chapter, "commissioner" means the agriculture commissioner and "department"
11 means the state department of ~~health~~environmental quality. Notwithstanding section 4-35-06,
12 the agriculture commissioner shall administer chapter 4-35 as it relates to pesticide usage.

13 **SECTION 18. AMENDMENT.** Subsection 7 of section 23-37-02 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 7. "Department" means the state department of ~~health~~environmental quality.

16 **SECTION 19. AMENDMENT.** Section 61-04.1-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-04.1-04. North Dakota atmospheric resource board created - Membership.**

19 There is hereby created a North Dakota atmospheric resource board which shall be a
20 division of the state water commission. The board shall be composed of the director of the state
21 aeronautics commission, a representative of the ~~environmental section of the state department~~
22 of ~~health~~environmental quality, the state engineer, and one additional board member from each
23 of seven districts established by section 61-04.1-05. The governor shall initially appoint one
24 board member for each of the seven districts from a list of three candidates given to the
25 governor by weather modification authorities in each district and:

- 26 1. When the term of office of any board member from any district is about to expire.
27 2. When a vacancy has occurred, or is about to occur, in the term of office of a board
28 member from any district for any reason other than expiration of term of office.

29 Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less
30 than three nor more than four terms shall expire on the first day of July of each odd-numbered
31 year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall

1 serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V,
2 and VII shall serve for four-year terms. Thereafter, board members from each district shall serve
3 for a four-year term of office except in the event the governor shall appoint a member for an
4 unexpired term, in which case the member shall serve only for the unexpired portion of the
5 term. In the event any district fails to furnish a list to the governor, or if there are no weather
6 modification authorities under this chapter within a district, then the governor shall appoint a
7 board member of the governor's choice residing within such district.

8 **SECTION 20. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 2. "Department" means the ~~state~~ department of ~~health~~environmental quality.

11 **SECTION 21. AMENDMENT.** Subsection 1 of section 61-28-03 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 1. The state water pollution control board consists of thirteen persons. The board must
14 include the ~~state health officer~~director of the department, state engineer, director of the
15 game and fish department, state geologist, and nine other members appointed by the
16 governor, three of whom must be representatives of production agriculture, two of
17 whom must be representatives of manufacturing and processing, one of whom must
18 be a representative of the solid fuels industry, one of whom must be a representative
19 of the fluid and gas fuels industry, one of whom must be a representative of the
20 environmental sciences, and one of whom must be a representative of county or
21 municipal government.

22 **SECTION 22. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 2. "Department" means the ~~state~~ department of ~~health~~environmental quality.

25 **SECTION 23. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 15. Designate the ~~state~~ department of ~~health~~ as the state safe drinking water agency for
28 all purposes of the federal Safe Drinking Water Act and is authorized to take all actions
29 necessary and appropriate to secure for the state the benefit of such Act and any
30 grants made thereunder.

1 **SECTION 24. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. There is established the water pollution control revolving loan fund, which must be
4 maintained and operated by the state department of ~~health~~environmental health.
5 Grants from the federal government or its agencies allotted to the state for the
6 capitalization of the revolving loan fund, and state matching funds when required, must
7 be deposited directly in the revolving loan fund in compliance with the terms of the
8 federal grant. Money in the revolving loan fund must be expended in a manner
9 consistent with terms and conditions of the grants received by the state and may be
10 used to offer loan guarantees; to provide payments to reduce interest on loans and
11 loan guarantees; to make bond interest subsidies; to provide bond guarantees on
12 behalf of municipalities, other local political subdivisions, and intermunicipal or
13 interstate agencies; to provide assistance to a municipality, other local political
14 subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal
15 share of the costs of a project; to finance the cost of facility planning and the
16 preparation of plans, specifications, and estimates for construction of publicly owned
17 treatment works or public water supply systems; to provide financial assistance for the
18 construction and rehabilitation of a project on the state priority list; to secure principal
19 and interest on bonds issued by a public trust having the state of North Dakota as its
20 beneficiary, or the public finance authority if the proceeds of such bonds are deposited
21 in the revolving loan fund and to the extent provided in the terms of the federal grant;
22 to provide for loan guarantees for similar revolving funds established by municipalities,
23 other local political subdivisions, or intermunicipal agencies; to purchase debt incurred
24 by municipalities or other local political subdivisions for wastewater treatment projects
25 or public water supply systems; to improve credit market access by guaranteeing or
26 purchasing insurance or other credit enhancement devices for local obligations or
27 obligations of a public trust having the state of North Dakota as its beneficiary or the
28 public finance authority; to fund other programs which the federal government
29 authorizes by the terms of its grants; to fund the administrative expenses of the
30 department associated with the revolving loan fund; and to provide for any other
31 expenditure consistent with the federal grant program and state law. Money not

1 currently needed for the operation of the revolving loan fund or otherwise dedicated
2 may be invested. All interest earned on investments must be credited to the revolving
3 loan fund.

4 **SECTION 25. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-29-04. Administration.**

7 This chapter must be administered by a Little Missouri River commission composed of the
8 director of the parks and recreation department, the ~~state health officer~~director of the ~~state~~
9 department of ~~health~~environmental quality, the chief engineer of the state water commission, or
10 their designated representatives, and one member from each of the following counties:

11 McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members
12 representing the above-mentioned counties must be appointed by their respective boards of
13 county commissioners and shall serve without compensation except that each appointing board
14 of county commissioners may reimburse its county representative for actual and necessary
15 mileage to and from meetings of the commission at the same rate as state officers. The county
16 representatives appointed must be resident landowners who live adjacent to the Little Missouri
17 River with the exception of the Golden Valley County representative. A county representative
18 unable to attend a meeting of the commission may be represented by a person who has a
19 written proxy from the representative authorizing that person to act and vote for the
20 representative. The proxy must be a resident landowner of the county that the proxy is
21 representing, but need not live adjacent to the Little Missouri River. The county members shall
22 serve terms of office as follows: two members shall serve one-year terms, two members shall
23 serve two-year terms, and two members shall serve three-year terms.

24 **SECTION 26. AMENDMENT.** Subsection 1 of section 61-33-09 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. The board consists of the manager of the Garrison Diversion Conservancy District, the
27 state engineer, the commissioner of university and school lands, the director of the
28 parks and recreation department, the director of the game and fish department, and
29 the ~~state health officer~~director of the department of environmental quality, or their
30 representatives.

1 **SECTION 27. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **61-38-03. (Contingent effective date - See note under section 61-38-01) Permits -**
4 **Certification from state department of healthenvironmental quality required.**

5 The state engineer may not issue a permit under this chapter without a certification from the
6 state department of healthenvironmental quality that the permitted activity will not adversely
7 affect water quality.

8 **SECTION 28. REPEAL.** Section 23-01-04.1 of the North Dakota Century Code is repealed.