

**HOUSE BILL NO. 1385**

Introduced by

Representatives Schreiber-Beck, Beltz, Brandenburg, Grueneich, Hauck, Headland, Mitskog,  
Warrey

Senator Weber

1 A BILL for an Act to amend and reenact section 61-16.1-38, subsection 1 of section  
2 61-16.1-53.1, section 61-32-03, and subsection 1 of section 61-32-08 of the North Dakota  
3 Century Code, relating to deadlines for permits issued by the department of water resources.

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

5 **SECTION 1. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **61-16.1-38. Permit to construct or modify dam, dike, or other device required -**  
8 **Penalty - Emergency.**

9 1. Dikes, dams, or other devices for water conservation, flood control regulation,  
10 watershed improvement, or water storage must be constructed in accordance with this  
11 chapter. A permit is required from the department for the construction of a:

12 a. A low-hazard dam or other device capable of retaining, obstructing, or diverting  
13 more than fifty acre-feet [61674.08 cubic meters] of water; a

14 b. A medium-hazard or high-hazard dam capable of retaining, obstructing, or  
15 diverting more than twenty-five acre-feet [30837.04 cubic meters] of water; an

16 c. An agricultural dike capable of protecting more than eighty acres [32.37 hectares]  
17 of land area; or any

18 d. Any dike capable of protecting an occupied residence or structure or public  
19 infrastructure.

20 2. A permit application for the construction of any dike, dam, or other device, along with  
21 complete plans and specifications, must be submitted to the department of water  
22 resources. Except for low-hazard dams less than ten feet [3.05 meters] in height,  
23 agricultural dikes, or a farmstead ring dike, the plans and specifications must be

1 completed by a professional engineer. The professional engineer must be registered in  
2 this state. ~~The department shall consider the application in such detail as the~~  
3 ~~department deems necessary and proper.~~ The department shall refuse to allow the  
4 construction of any unsafe or improper dike, dam, or other device that would interfere  
5 with the orderly control of the water resources of the district, or may order changes,  
6 conditions, or modifications as in the department's judgment may be necessary for  
7 safety or the protection of property.

8 3. Within forty-five days after application receipt, ~~except in unique or complex situations,~~  
9 the department shall complete the initial review of the application and forward the  
10 application, along with any changes, conditions, or modifications, to the water  
11 resource board of the district within which the contemplated project is located. The  
12 board shall consider the application within forty-five days, and suggest any changes,  
13 conditions, or modifications to the department. ~~If the board approves the application,~~  
14 ~~the board shall forward the approved application to the department.~~ If the board fails to  
15 respond within forty-five days, the board will be deemed to have no changes,  
16 conditions, or modifications to make.

17 4. The department shall make the final decision on the application ~~and~~within one  
18 hundred twenty days after the department receives a completed application. The  
19 department shall forward that decision to the applicant and the local water resource  
20 board. If the department fails to approve the permit application within that period, the  
21 permit is approved with no conditions. The department may issue temporary permits  
22 for dikes, dams, or other devices in cases of an emergency.

23 5. Any person constructing a dam, dike, or other device without first securing a  
24 necessary permit, as required by this section, is liable for all damages proximately  
25 caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

26 **SECTION 2. AMENDMENT.** Subsection 1 of section 61-16.1-53.1 of the North Dakota  
27 Century Code is amended and reenacted as follows:

28 1. The board shall make the decision required by section 61-16.1-53 within a reasonable  
29 time, not exceeding one hundred twenty days, after receiving the complaint. The board  
30 shall notify all parties of its decision by certified mail. Any aggrieved party may appeal  
31 the board's decision to the department of water resources. The appeal to the

1 department must be made within thirty days from the date notice of the board's  
2 decision has been received. The appeal must be made by submitting a written notice  
3 to the department which must state specifically the reason why the board's decision is  
4 erroneous. The appealing party also shall submit copies of the written appeal notice to  
5 the board and to all nonappealing parties. Upon receipt of this notice the board, if it  
6 has ordered removal of a dam, dike, or other device, is relieved of its obligation to  
7 procure the removal of the dam, dike, or other device. The department shall handle  
8 the appeal by conducting an independent investigation and making an independent  
9 determination of the matter. The department may enter property affected by the  
10 complaint to investigate the complaint. The department shall make a decision on an  
11 appeal within a reasonable time, not exceeding one hundred twenty days from the  
12 department's receipt of the appeal. If the department fails to make a decision on an  
13 appeal within that period, the appeal is denied.

14 **SECTION 3. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **61-32-03. Permit to drain waters required - Penalty.**

- 17 1. Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof,  
18 which has a watershed area comprising eighty acres [32.37 hectares] or more, shall  
19 first secure a permit to do so. The permit application must be submitted to the  
20 department of water resources. TheWithin one hundred twenty days after the  
21 department receives a completed application, the department shall refer the  
22 application to the water resource district or districts within which is found a majority of  
23 the watershed or drainage area of the pond, slough, lake, or sheetwater for  
24 consideration and approval, but the department may require applications proposing  
25 drainage of statewide or interdistrict significance be returned to the department for  
26 final approval. If the department fails to refer the application within one hundred twenty  
27 days, the water resource district or districts within which is found a majority of the  
28 watershed or drainage area may consider and approve the application, with  
29 reasonable conditions.
- 30 2. A permit may not be granted until an investigation discloses the quantity of water  
31 which will be drained from the pond, slough, lake, or sheetwater, or any series of those

1 water bodies, will not flood or adversely affect downstream lands. If the investigation  
2 shows the proposed drainage will flood or adversely affect lands of downstream  
3 landowners, the water resource board may not issue a permit until flowage easements  
4 are obtained. The flowage easements must be filed for record in the office of the  
5 recorder of the county or counties in which the lands are situated. An owner of land  
6 proposing to drain shall undertake and agree to pay the expenses incurred in making  
7 the required investigation. This section does not apply to the construction or  
8 maintenance of any existing or prospective drain constructed under the supervision of  
9 a state or federal agency, as determined by the department of water resources.

10 3. Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or  
11 any series of those water bodies, which has a watershed area comprising eighty acres  
12 [32.37 hectares] or more, without first securing a permit to do so, as provided by this  
13 section, is liable for all damage sustained by any person caused by the draining, and  
14 is guilty of an infraction.

15 4. As used in this section, sheetwater means shallow water that floods land not normally  
16 subject to standing water.

17 5. The department of water resources may adopt rules for temporary permits for  
18 emergency drainage.

19 **SECTION 4. AMENDMENT.** Subsection 1 of section 61-32-08 of the North Dakota Century  
20 Code is amended and reenacted as follows:

21 1. The board shall make the decision required by section 61-32-07 within a reasonable  
22 time, but not to exceed one hundred twenty days, after receiving the complaint. The  
23 board shall notify all parties of its decision by certified mail. Any aggrieved party may  
24 appeal the board's decision to the department of water resources. The appeal to the  
25 department must be made within thirty days from the date notice of the board's  
26 decision has been received. The appeal must be made by submitting a written notice  
27 to the department, and the notice must specify the reason why the board's decision is  
28 erroneous. The appealing party also shall submit copies of the written appeal notice to  
29 the board and to all nonappealing parties. Upon receipt of this notice the board, if it  
30 has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to  
31 procure the closing or filling of the drain, lateral drain, or ditch. The department shall

1 handle the appeal by conducting an independent investigation and making an  
2 independent determination of the matter. The department may enter property affected  
3 by the complaint to investigate the complaint. The department shall make a decision  
4 on an appeal within a reasonable time, not exceeding one hundred twenty days from  
5 the department's receipt of the appeal. If the department fails to make a decision on  
6 an appeal within that period, the appeal is denied.