

**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1062**

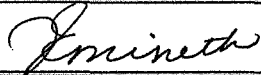
# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Energy and Natural Resources Committee

Pioneer Room, State Capitol

HB 1062  
Jan 17, 2013  
17365

☐ Conference Committee



**Relating to appeals of removal or closing of a noncomplying dam dike, or other device and drains**

1 testimony

### Minutes:

The meeting was called to order by Rep. Porter:

John Packzowski Chief of the regulatory Section of North Dakota State Water Commission; I am here in support of HB 1062 which seeks to amend N.D.C.C. 61-16.1-53, 61-16.1-53.1 61-32-07, and 61-32-08. (See test 1)

Rep. Keiser: In most cases in the state there is sequence in the appeal process and I support what you are proposing and making it constant but in most cases the person doing the appeal always has the right to go to the highest level as I understand your testimony they must first go to the State Engineer Is that correct?

John Packzowski: Correct if the structures are built prior to 1999 as in the case of dams and dikes the appeal of the water resource district decision has to go district court.

Rep. Keiser: In workers Comp. you can challenge can always go through district court. In almost every area of our state there is an appeal process but this process will set up a procedure where you have to go to the first level before getting to the district court. Is that Constitutional?

John Packzowski; you are correct that would be the steps.

Rep. Porter; Are there any further questions? We have a motion for a do pass on HB 1062 form Rep. Keiser second from Rep. Brabandt is there any discussion

Do Pass 13   No 0   Absent 0   Carrier: Rep. Silbernagel

Date: 1-17-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1062

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By Rep Keiser Seconded By Rep Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Silbernagel

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1062: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1062 was placed on the Eleventh order on the calendar.

**2013 SENATE NATURAL RESOURCES**

**HB 1062**

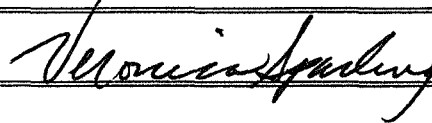
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee  
Fort Lincoln Room, State Capitol

HB 1062  
February 22, 2013  
19391

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to appeals of removal or closing of a noncomplying dam, dike, or other device and drains

## Minutes:

attachments

Chairman Lyson opened the hearing for HB 1062.

John Paczkowski, Chief of the Regulatory Section for the State Water Commission, presented written testimony on behalf of State Engineer Todd Sando. See attachment #1.

Senator Triplett asked for a history of why this was set into code as two separate processes.

Mr. Paczkowski as far as he could ascertain, there was not any good reason for it. (04:22 to 05:09)

Opposition: None

Neutral: None

Chairman Lyson closed the hearing for HB 1062.

Senator Murphy: Do Pass

Senator Unruh: Second

Roll Call Vote: 7, 0, 0

Carrier: Senator Murphy

Date: 2-22-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1062

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Murphy Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Murphy

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1062: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1062 was placed on the Fourteenth order on the calendar.



**2013 TESTIMONY**

**HB 1062**

## **TESTIMONY ON HOUSE BILL NO. 1062**

### **House Natural Resources Committee**

**John Paczkowski, Chief - Regulatory Section  
North Dakota State Water Commission**

**January 17, 2013**

Mr. Chairman and members of the Natural Resources Committee, my name is John Paczkowski and I am the Chief of the Regulatory Section for the State Water Commission. On behalf of State Engineer, Todd Sando, I am here in support of House Bill No. 1062 which seeks to amend N.D.C.C. §§ 61-16.1-53, 61-16.1-53.1, 61-32-07, and 61-32-08.

These amendments will clarify the appeals process for landowners with noncomplying dikes, dams, drains, etc., and will make the process consistent for all landowners regardless of when the structure was constructed. Local water resource boards will handle the initial complaints, and appeals will flow to the state engineer, then the district court, and finally to the supreme court.

N.D.C.C. §§ 61-16.1-53 and 61-16.1-53.1 govern the removal of unauthorized dikes, dams, and other water storage devices and the subsequent appeal process. However, the way these statutes are currently written is causing confusion for landowners regarding the appeals process. N.D.C.C. § 61-16.1-53 currently requires complaints of unauthorized works to be filed with the local water resource board, and then appeals are required to be taken to district court. However, N.D.C.C. § 61-16.1-53.1 then states that appeals of the board's decision under 61-16.1-53 may be appealed to the state engineer. However, N.D.C.C. § 61-16.1-53.1 only applies to unauthorized works constructed after August 1, 1999. This means that the forum for appeal varies based on the construction date of the works.

It also creates a legal problem in that landowners with works constructed after 1999 have three chances to appeal (state engineer, district court, supreme court), while landowners with devices constructed before 1999 only have two chances to appeal (district court, supreme court). Further, landowners with devices constructed after 1999 can currently conduct their appeal either by going through the state engineer under N.D.C.C. § 61-16.1-53.1 or going directly to district court under N.D.C.C. § 61-16.1-53, while other landowners do not have such a choice.

By deleting the last two sentences of N.D.C.C. § 61-16.1-53 and the last sentence of N.D.C.C. § 61-16.1-53.1, all appeals from local boards regarding unauthorized dikes, dams, etc. would be taken to the state engineer. Language elsewhere in the Code then allows appeals from decisions of the state engineer to be taken to district court and the supreme court.

Further, these same problems occur in the drainage statutes: N.D.C.C. §§ 61-32-07 and 61-32-08. Under the current Code, appeals of unauthorized drains constructed prior to January 1, 1987, must be appealed to district court under N.D.C.C. § 61-32-07, but appeals for drains constructed after that time are taken to the state engineer under 61-32-08.

Therefore, the Office of the State Engineer is in support of House Bill No. 1062 because it allows for a standardized process in dealing with the removal of noncomplying dikes, dams, drains, and other devices regardless of when they were constructed.

Also, for consistency, “registered” mail was amended to “certified” mail.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

#1

## **TESTIMONY ON HOUSE BILL NO. 1062**

### **Senate Natural Resources Committee**

**John Paczkowski, Chief - Regulatory Section  
North Dakota State Water Commission**

**February 21, 2013**

Mr. Chairman and members of the Natural Resources Committee, my name is John Paczkowski and I am the Chief of the Regulatory Section for the State Water Commission. On behalf of State Engineer, Todd Sando, I am here in support of House Bill No. 1062 which seeks to amend N.D.C.C. §§ 61-16.1-53, 61-16.1-53.1, 61-32-07, and 61-32-08.

These amendments will clarify the appeals process for landowners with noncomplying dikes, dams, drains, etc., and will make the process consistent for all landowners regardless of when the structure was constructed. Local water resource boards will handle the initial complaints, and appeals will flow to the state engineer, then the district court, and finally to the supreme court.

N.D.C.C. §§ 61-16.1-53 and 61-16.1-53.1 govern the removal of unauthorized dikes, dams, and other water storage devices and the subsequent appeal process. However, the way these statutes are currently written is causing confusion for landowners regarding the appeals process. N.D.C.C. § 61-16.1-53 currently requires complaints of unauthorized works to be filed with the local water resource board, and then appeals are required to be taken to district court. However, N.D.C.C. § 61-16.1-53.1 then states that appeals of the board's decision under 61-16.1-53 may be appealed to the state engineer. However, N.D.C.C. § 61-16.1-53.1 only applies to unauthorized works constructed after August 1, 1999. This means that the forum for appeal varies based on the construction date of the works.

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