

2019 HOUSE AGRICULTURE

HB 1087

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Peace Garden Room, State Capitol

HB 1087
1/10/2019
Job #30634

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to a permit to construct or modify a dam, dike, or other device.

Minutes:

Attachment #1

Aaron Carranza, Director of the Regulatory Division, Office of the State Engineer:
(Attachment #1):

(3:29)

Representative Schreiber-Beck: Gave an example from a constituent.
Is this listed in any other place in code?

Aaron Carranza: This deals with the application part of the process. The review of whether or not impacts could be felt downstream is part of the application process. The process is the same regardless if a professional engineering license is required or not.

Chairman Dennis Johnson: Fifty-acre feet is when the permit is needed. Explain what 50-acre feet is.

Aaron Carranza: It is an area of 50 acres with one foot of water on it.

Representative Skroch: Gave example of local farmer. Does the water board still need to approve if agricultural dikes are exempt only if they are under two feet? What if we set it at three feet?

Aaron Carranza: The water board review process is still in play if the agricultural levy protects more than 50 feet of volume. If the volume protected is less than that, then no state permit is required. Local rules and ordinances would be in place. If the three-foot high dike had a protected volume of 50-acre feet, the state process and county process would be the same. We are confident at the two-foot level that the expected implications would be minimal. The State Engineer's Office still has the authority to seek additional information to make a sound decision.

Representative Skroch: Could you put together a ball-park figure as to what that cost might be to a landowner to have that state review by the state engineer?

Aaron Carranza: The state engineer review is a free process. The professional engineering design is not free. This allows applications to come in for review of certain exemptions. A typical cost to a landowner would depend on what information is required by the state.

Representative McWilliams: Could you provide pictures, a diagram, or outline of what the result would be with a 2-foot dike and outline what a 50-foot acre would look like as opposed to other sizes?

Aaron Carranza: Yes. In the last 5 years we have received 72 dike applications. Of the 72 applications, 9 would have fallen into this agricultural levy less than 2-feet high parameter.

Opposition: none

Chairman Dennis Johnson: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Peace Garden Room, State Capitol

HB 1087—Committee Work
1/17/2019
Job #30965

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to a permit to construct or modify a dam, dike, or other device

Minutes:

Attachment #1

Aaron Carranza, Director of the Regulatory Division, Office of the State Engineer:

(Attachment #1) At the committee hearing last week there was a request of what 50-acre feet would look like. What we came up with is about ankle high water on a quarter section of land. That is also equivalent to about 25 Olympic-size pools.

The other question was “What do these structures look like in the field.” (Refers to picture with Attachment #1) This is a structure about eight miles north of the Grand Forks Air Force Base. It was created by moving ground. It wouldn’t need a professional engineer to show how to construct it. If there are concerns during the application process, the State Engineer’s team will review it and work with the landowner to address the concerns.

Chairman Dennis Johnson: This is 50-acre feet on a quarter of land. Up to that size you are asking to not have an engineer to do it.

Aaron Carranza: The permitting threshold is that volume. The project could protect a section of land. It would still require a permit. The basis is the levy height and the intent of protection. It could be 100-acre feet or 300-acre feet as long as the intent is similar this exemption would be in place. Any volume less than that would not require a state permit. It would be up to the local municipalities to manage it.

Chairman Dennis Johnson: That size and above you would need a permit from the State Engineer. If it is below that size, you just need a local permit from the water board?

Aaron Carranza: Correct

Representative Headland: In this example, did the property owner apply for a permit from the State Water Commission?

Aaron Carranza: Yes they did. They did not have a professional involved. Due to the engineer working at the time and limitations with the technical review, a permit was not deemed necessary. Looking back that may not have been the correct choice.

Chairman Dennis Johnson: Would the project have been completed differently had there been an engineer?

Aaron Carranza: Then they may not have done it at all.

Representative Richter: A landowner could erect one of these and deny water to someone else. Would the permitting process make that undoable?

Aaron Carranza: If there are concerns, we try to work with the applicant and other parties.

Representative Tveit: If it is this type of a structure or less, the state doesn't require a permit or they don't require an engineer to apply for the permit?

Aaron Carranza: For dikes in general the permitting threshold is based upon the volume protected behind the structure. As long as that volume is less than 50-acre feet regardless of intent, a permit is not required from the State Engineer's office. If the volume is over 50-acre feet, then the categorization of what is being protected in the height of the structure goes into play. An application is still required. But a professional engineer may not be.

Representative Satrom: The idea is to protect the land from the ditch?

Aaron Carranza: It depends on who is submitting the application. Most of the time it is a landowner protecting water from coming onto the property. The key characteristic for dikes is protecting something.

Representative McWilliams: Can you explain again how 50-acre feet is calculated? Are we talking about the width and length of the ditch?

Aaron Carranza: It is the volume protected up to the top of a levy. The levy will tie into high ground and no longer exist. That creates a bowl behind the structure. It is the volume in that bowl that we look at to see whether 50-acre feet is met. If so, a permit is required. If not, then it becomes a local water management issue.

Representative Fisher: Is there a relationship between HB1087 and HB1086?

Aaron Carranza: There is not. HB1087 is about the construction permitting process. HB1086 talks about a clarification in how waters the State Engineer's office can appropriate for beneficial use.

Representative Skroch: If I have 99 acres with 6 inches in depth. That would be about 49-acre feet, So I don't need a permit?

Aaron Carranza: That is correct. As long as it is under 50 feet.

Chairman Dennis Johnson: I thought you said there is no engineer needed if less than 50 feet. I thought you still needed a permit from the local water board.

Aaron Carranza: The 50-acre feet is the state law for permitting. If you are under 50-acre feet, the State Engineer's office has no authority. If the local board has a permitting process, then that is followed. Most in the Red River Basin have additional requirements.

Representative Kiefert: Your illustration is to keep the water from flowing onto the farmland. How do you determine how many acre feet of water is coming by or is it how much water would flow onto the land if the dike wasn't there?

Aaron Carranza: The calculation is a volume of how much could come on.

Representative Kiefert: If you have a neighbor running water on your land, can you put up a dike to limit to the 50 feet of water?

Aaron Carranza: That is more of a legal question. Water resource districts do have authority to hear obstruction-to-a-drain complaints. Blocking could trigger a complaint.

Representative Headland: Moved Do Pass

Representative Schreiber-Beck: Seconded the motion.

A Roll Call vote was taken: Yes 13, No 0, Absent 1.

Do Pass carries.

Representative Schreiber Beck will carry the bill.

Representative Satrom: Do we need an emergency clause?

Aaron Carranza: There is not a need.

Date: 1/17/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1087**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Headland Seconded By Rep. Schreiber Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	AB		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Schreiber Beck

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

REPORT OF STANDING COMMITTEE

HB 1087: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1087 was placed on the
Eleventh order on the calendar.

2019 SENATE AGRICULTURE

HB 1087

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1087
2/15/2019
32838

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature: Dan Johnston II / Pam Dever
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Explanation or reason for introduction of bill/resolution:

Relating to a permit to construct or modify a dam, dike, or other device.

Minutes:

1 attachment – Aaron Carranza

Aaron Carranza, Director of Regulatory Division, State Engineer: See attachment #1 for testimony in support of HB 1087. We are trying to change the permit application process for the construction of agricultural dikes in N.D.

Senator Hogan: How many of these types of dikes are you reviewing now, and how much land does that effect?

Aaron Carranza: We typically review a handful every year, it is not like an onslaught of these kinds of structures. But typically these are of a lower priority. When they come to us and ask what do they need to do to submit an application. We tell them they need to hire a professional engineer, but we may or may not hear back from an applicant. (3.39)

Senator Hogan: So, is the dike being build, and we just do not know about it?

Aaron Carranza: We cannot say with certainty, but that is a potential likelihood.

Senator Klein: The idea is that if you are building an Agriculture dike, you can do a two footer without calling an engineer. Before this, you had that ten feet word in there and that through people off. This just creates clarity that it is an Agriculture dike. We are good.

Aaron Carranza: Currently, if any dike protecting more than 50 acre feet requires a PE to design a plan to specifications. The only exception is for dams is less than 10 feet in height, so this would add dikes less than 2 feet in height. Also, provides clarity. (4.45)

Chairman Luick: I have a technical correction I want to ask you about. On line 10, it says “or diverting more than fifty acre-feet of water or twenty-five acre-feet”. Why do we have 50 acre-feet and then 25 acre-feet listed separately?

Aaron Carranza: This bill is an all-encompassing construction permit application required bill; so that is strictly for dams. Medium-to-high hazard dams, where more than a few lives could be lost if it were to fail, our permit is required if it impounds more than 25 acre-feet of water. For all other construction projects and dams, a permit is required if it impounds more than 50 acre-feet. So, there are two different permits levels depending on the risk of death should the dam fail.

Chairman Luick: So it is OK as it reads?

Aaron Carranza: This is like other state so we are not changing. **(6.14)**

Chairman Luick: Further questions? Further testimony in favor? Against? We will close the hearing.

Senator Hogan: Moved a Do Pass on HB 1087.

Senator O. Larsen: Seconded.

Chair Luick: Any discussion? Take the roll.

A Roll Call was taken: 6 yeas, 0 nay, 0 absent. Sen. Myrdal Voted Yea on job #32865

(done 7.50)

Date: 2-15-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1087

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Hogan Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Luick	✓		Senator Hogan	✓	
Vice Chair Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Luick

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

Senator Myrdal voted "yes" on job # 32865.

REPORT OF STANDING COMMITTEE

HB 1087: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1087 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

HB 1087

#1
HB 1087
1/10/19

Testimony
House Bill 1087 – Office of the State Engineer
House Agriculture Committee
Representative Johnson, Chairman
January 10, 2019

Chairman Johnson and members of the House Agriculture Committee, my name is Aaron Carranza and I am the Director of the Regulatory Division for the Office of the State Engineer. I am here today to present testimony regarding House Bill 1087. House Bill 1087 is an agency sponsored bill that proposes a change to the permitting process for the construction of agricultural dikes in North Dakota.

North Dakota Century Code § 61-16.1-38 requires that all dikes which protect more than 50 acre-feet of volume obtain a construction permit from the Office of the State Engineer. Currently, if a permit is required for a dike, the applicant is required by law to submit with the application plans and specifications completed by a professional engineer registered in this state. The only exemption to the requirement that the plans and specifications be completed by a registered professional engineer is for low-hazard dams less than ten-feet high.

House Bill 1087 would expand this exemption to include agricultural dikes less than two feet in height. For the purpose of this proposed change,

#1
HB 1087
1/10/19

"agricultural dikes" are those dikes whose intent is to protect agricultural lands only. Agricultural dikes are typically constructed along streams or watercourses, or along the backslopes of road ditches.

Since agricultural dikes are typically outside of densely populated areas and lower in height, the public safety concerns tend to be minimal. As such, the regulatory concern regarding agricultural dikes is more of a water management consideration that may not require a professional engineering design in all situations for the dike to be adequately evaluated. By adding to the professional engineer exemption, agricultural producers looking to provide some level of protection to their lands would not be required to incur the expense of engineering plans and specifications prior to any state technical review.

The State Engineer supports the passage of House Bill 1087 and fully supports the sound management of water resources through ongoing cooperation and education between agricultural producers, water resource districts, and the state.

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

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HB 1087
1/17/19

From: "Carranza, Aaron J." <acarranza@nd.gov>

Date: January 11, 2019 at 4:31:02 PM CST

To: "Johnson, Dennis E." <djohnson@nd.gov>, "Trottier, Wayne A." <wtrottier@nd.gov>, "Blum, Jake" <jblum@nd.gov>, "Buffalo, Ruth" <rbuffalo@nd.gov>, "Dobervich, Gretchen" <gdobervich@nd.gov>, "Fisher, Jay" <jayfisher@nd.gov>, "Headland, Craig A." <cheadland@nd.gov>, "Kiefert, Dwight H." <dhkiefert@nd.gov>, "McWilliams, Aaron" <amcwilliams@nd.gov>, "Richter, David W." <dwrichter@nd.gov>, "Satrom, Bernie L." <blsatrom@nd.gov>, "Schreiber-Beck, Cynthia" <cschreiberbeck@nd.gov>, "Skroch, Kathy" <kskroch@nd.gov>, "Tveit, Bill" <btveit@nd.gov>

Cc: "Erbele, Garland G." <gerbele@nd.gov>, "Paczkowski, John A." <jpaczkowski@nd.gov>

Subject: **House Bill 1087 additional information**

Members of the House Agriculture Committee,

Towards the end of the hearing for House Bill 1087, additional information was requested to help gain a clearer picture of the type of agricultural structures referenced in the bill as well as the minimum permitting threshold volume of 50 acre-feet.

For an illustration of the type of structure being discussed, please see the attached photo showing a ~2-foot high agricultural dike about 8 miles north of the Grand Forks Air Force Base.

For another perspective of what 50 acre-feet looks like, a flat quarter-section of land with ankle-deep water is also approximately 50 acre-feet.

If there are any additional questions or clarifications needed, please let me know and I will be happy to address them.

Thank you for this opportunity to provide additional information.

Have a good weekend.

Aaron Carranza, P.E., CFM
Director, Regulatory Division

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1/12/19

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2-15-19
#1 Pg 1

Testimony
House Bill 1087 – Office of the State Engineer
Senate Agriculture Committee
Senator Luick, Chairman
February 15, 2019

Chairman Luick and members of the Senate Agriculture Committee, my name is Aaron Carranza and I am the Director of the Regulatory Division for the Office of the State Engineer. I am here today to present testimony regarding House Bill 1087. House Bill 1087 is an agency sponsored bill that proposes a change to the permitting process for the construction of agricultural dikes in North Dakota.

North Dakota Century Code § 61-16.1-38 requires that all dikes which protect more than 50 acre-feet of volume obtain a construction permit from the Office of the State Engineer. Currently, if a permit is required for a dike, the applicant is required by law to submit with the application plans and specifications completed by a professional engineer registered in this state. The only exemption to the requirement that the plans and specifications be completed by a registered professional engineer is for low-hazard dams less than ten-feet high.

House Bill 1087 would expand this professional engineer exemption to include agricultural dikes less than two feet in height. For the purpose of

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Att #1
pg 2

this proposed change, "agricultural dikes" are those dikes whose intent is to protect agricultural lands only. Agricultural dikes are typically constructed along streams or watercourses, or along the backslopes of road ditches. Attached to my testimony is an example of the kind of structure that would fit this exemption.

Since agricultural dikes are typically outside of densely populated areas and lower in height, the public safety concerns tend to be minimal. As such, the regulatory concern regarding agricultural dikes is more of a water management consideration that may not require a professional engineering design in all situations for the dike to be adequately evaluated. By adding to the professional engineer exemption, agricultural producers looking to provide some level of protection to their lands would not be required to incur the expense of engineering plans and specifications prior to any state technical review.

The State Engineer supports the passage of House Bill 1087 and fully supports the sound management of water resources through ongoing cooperation and education between agricultural producers, water resource districts, and the state.

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pg 3



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