19.8044.02000

FISCAL NOTE

Requested by Legislative Council
12/21/2018

Revised
Amendment to: SB 2090

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$60,000		$60,000
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This is primarily a housekeeping bill to clean-up unused language and clarify and simplify procedures related to the appropriation of waters of the state in chapter 61-04. Water permit application fees are the only portion of the bill having a fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 9 of the bill will modify the water permit application fees that have not been addressed since 1991.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Anticipated biennial revenues will rise by approximately $60,000 as a result of the proposed modification in water permit fee structure.

Approximately 54% ($32,000) of the anticipated increase in revenues will come from the increase in industrial water permit application fees.

Approximately 42.5% ($25,500) of the anticipated increase in revenues will come from the increase in irrigation water permit application fees.

Approximately 2% ($1,000) of the anticipated increase in revenues will come from the increase in municipal/public use water permit application fees and number of applications anticipated.

Approximately 0.5% ($300) of the anticipated increase in revenues will come from an slight increase in the number of recreation, livestock, or fish and wildlife applications. No application fee increase is being proposed for this category of use.

Approximately 2% ($1,200) of the anticipated increase in revenues will come from the increase in water permit amendment application fees and number of amendment applications anticipated.

All water permit application fees are deposited in the resources trust fund.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: 701 328-1956

Date Prepared: 01/03/2019

19.8044.01000

FISCAL NOTE

Requested by Legislative Council
12/21/2018

Revised
Bill/Resolution No.: SB 2090

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$60,000		$60,000
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: 701 328-1956

Date Prepared: 01/03/2019

19.8044.01000

FISCAL NOTE

Requested by Legislative Council
12/21/2018

Bill/Resolution No.: SB 2090

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		$31,500		$91,500		$91,500
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
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Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

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Name: David Laschkewitsch

Agency: ND State Water Commission

Telephone: 701 328-1956

Date Prepared: 12/26/2018

2019 SENATE ENERGY AND NATURAL RESOURCES

SB 2090

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2090
1/11/2019
Job Number 30692

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to permits for the appropriation of water, the appropriation of water, appeals of permit application rejections, change in point of diversion or use, surplus water delivery and a prescriptive water right.

Minutes: 2 attachments

Jon Patch, Director, Water Appropriation Division of the Office of the State Engineer/State Water Commission (0:15-12:55) introduced the bill, please see attachment #1. Attachment 2 is a supplemental table.

Senator Cook: How's life going to change for anybody wanting a water permit?

Mr. Patch: There are some increases in fees that we're proposing, especially somebody applying for an industrial permit. We don't get a lot of municipal applications these days. Taking away the distinction of population is not going to affect many people. The irrigation fees are going from $200 to $500. We get about one hundred of those a biennium. Those folks end up paying more on a one-time basis for a filing fee, which can become a water right, if it's put to beneficial use and serve them very well for their future of irrigation. They'll make the return on that money very quickly; the same can be said of industrial permits. We didn't know about fracking in 1991, the levels of industrial use were not accounting for the fact that an acre-foot of water can be sold for $5000, so their application fee of $1000 is easily paid back. The other changes in this bill are mainly clean up and organizational changes to make it clearer and easier for us to explain to people. We're modernizing the statute, which hasn't been done for quite some time. It would not have major impacts.

Senator Cook: It's not going to do anything that's going to cause someone to call us in an uproar.

Mr. Patch: I can't guarantee that. Any little change can cause uproar in the world of water, I'm used to that, I would recommend that you refer them to me, I will explain the reasoning behind it.

Senator Piepkorn: Explain to me section 4 and fossil byproduct water please.

Mr. Patch: Fossil Byproduct Water(FBW) has no definition right now. What we're planning on doing is in House Bill 1086, section 61-01, Waters of the State. FBW is water that's entrained with oil. As they pump the oil, they pump a lot of water. They have to deal with it and there's a lot of interest in reusing that water for another frack job. Essentially if we don't define as not a water of the state, they need another water permit. We're exempting it from the need for a permit, and defining it as a water that is extracted from the production of oil and gas, and below the deepest potable aquafer separated by a practically impermeable layer. That puts it down into the oil producing zones of the state.

Senator Piepkorn: Is the use of this type of water restricted? Domestic livestock, fish, wildlife. Is it not used for anything other than more commercial use?

Mr. Patch: Because we remove it from one of the waters of the state; it could be used for anything. Right now, this is the only thing it could be used for, because it's very poor quality water, it couldn't be used for anything other than fracking or injecting it down into the Dakota formation as disposal water.
There is that request in testimony to amend section 13 to clean it up. The main point is we have been using in our framework, the criteria of a water permit as numerical, then subsets alphabetical. They changed that to be alphabetical, then subsets numerical. Now all our documents change from 4-c to 3-d, for example. It's minor I know, but it's a big deal for us, it would be nice to keep in the same format.

No further agency, in favor, or opposing testimony.
Public hearing closed.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2090
1/31/2019
Job Number 31911

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to permits for the appropriation of water, the appropriation of water, appeals of permit application rejections, change in point of diversion or use, surplus water delivery and a prescriptive water right.

Minutes: No attachments

Chair Unruh: This was one of our first hearings, it does have some clean-up language in it, I think the biggest thing it did was increase the conditional water permit fees on page 6. Water can be a difficult topic to discuss, I've not had anybody contact me with any issues included in here.

Senator Schaible: I move do pass.
Vice-Chair Kreun: Second.

A roll call vote was taken.
Motion carries 6-0-0.

Chair Unruh: will carry.
Chair Unruh: Closed the meeting.

Date: 1/31/19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate Energy and Natural Resources 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 Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Jim Roers	X	
Senator Curt Kreun	X		Senator Merrill Piepkorn	X	
Senator Donald Schaible	X				
Senator Dwight Cook	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Unruh

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

REPORT OF STANDING COMMITTEE

SB 2090: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Eleventh order on the calendar.

2019 HOUSE ENERGY AND NATURAL RESOURCES

SB 2090

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

SB 2090
2/28/2019
32967
☐ Subcommittee
☐ Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

relating to permits for the appropriation of water, appeals of permit applications, change in point of diversion or use, surplus water deliver and a prescriptive water right

Minutes: Attachment 1

Jon Patch, Director of Water Appropriation Division of the Office of the State Engineer: presented Attachment 1.

8:15:

Rep Heinert: You made a statement "except those reusing fossil byproducts water", about taking that out of Century Code but creating administrative code.

Jon Patch: Right now there's no definition at all of fossil byproduct water. So what we're attempting to do, is exempt fossil byproduct water from the need for a permit but we want to define it in Administrative Code, on the advice of legal counsel. I would have no problem putting a definition in code, we worked on one, and could provide that to you.

Rep Heinert: How many will look at administrative code before they start calling and asking.

Rep Heinert: I agree.

Chairman Porter: Do you have that with you?

Jon Patch: I can get that for you today.

9:48

Rep Heinert: Page 6 under application fees, you said we're just trying to catch up with other states. It appears to me most of these are 100% increase. Is there a reason for 100% or simply to catch up or do we need the financial aid in the water department?

Patch: We haven't looked at these fees for over 30 years. We're balancing fees. The real drive was with municipal fees, the real drive with industrial use fees. With the advent of

fracking, there's been a dramatic increase in water permit applications for industrial use. These are waters of the state being used to drive the oil industry and water has become a commodity. The value of the water is such that one acre foot as a commodity is $5000. We're asking to increase the fee from $250 for up to 724 acre feet, to be increased to $1000 for anything over one (1) acre foot. These are waters of the state and deserves to have more than a nominal fee to be able to make copious amounts of money selling the waters of the state. It's not being used by the person getting the permit, they're selling that water. The oil industry is putting it to use in the fracking of wells. It deserves an appropriate application fee.

Rep Heinert: So the increase is not because your agency needs additional funding. It's because you feel they should pay more.

Patch: We're a special funded agency from the Water Resource Trust Fund. These fees go into the water development fund which I think end up in the water resources trust fund. I don't think it's meant to fund our department. We put way more time in the evaluation and management of the resource to appropriate the waters of the state. It's a matter of fairness for the citizens of the state, and may prevent some frivolous applications that add backlog, administrative time, potential holding adjudicative hearings, and the administrative law judge.

Rep Heinert: Page 2 of your testimony, you ask for an increase in irrigation application fees from $200-$500 fees. What people ask for this application, farmers, ranchers, oil industry?

Patch: A permit has a purpose and has to be identified, municipal, rural water, industrial, irrigation, fish, wildlife and recreation. An irrigation permit would be a farmer.

Rep. Keiser: Page 14- What criteria will the state engineer use- objective in rule or some other?

Patch: We'd look at it as if it's a new application. If someone has a senior priority date, and wants to add a point of diversion where other applications have already been filed and established a priority date on their application, it may put them senior to them, we would look at that as a new ap in that area.

18:30

Chairman Porter: Page 14 on those transfers, currently I can buy a quarter that's irrigated and it transfers to me. Is this changing that? Now I have 2 transactions to be completed?

Patch: No you wouldn't need to get our approval. Point of clarification, when we use the word transfer, it's actually transferring the acreage from one area of land to another area. You're talking about an assignment, as owner you'd have the ability to have that assigned to you, it's routine, we do them all the time. You only have to show a legal document to show you own the land.

Chairman Porter: You're talking about moving it inside the acreage I own.

Patch: Yes, you'd have to have a legal interest in that. We're not moving the point of diversion; all you're doing is transferring the acres approved. You have an approved acreage tract on your permit for X of acres.

21:28

Chairman Porter: Page 14 If I'm just moving the water to another quarter, why do I have to go back and show it won't adversely affect the rights of other appropriators when I'm already appropriated that amount of water and I'm just moving water from the same well to someplace else I own.

Patch: This language is existing language, underlined for you to see better. There should be no adverse effects. You wouldn't have to prove anything other than you own the land and the evaluation of the effects on existing appropriators would be easy to evaluate because there should be no adverse effects on existing appropriators.

Chairman Porter: The danger of opening up and changing code, we find things not necessarily not correct. It seems like the burden of proof shouldn't be on me. I've already got the water and own the land, I should be able to move it inside my ownership without you saying I have to prove it's not going to hurt others. Look at that to word in a better way that isn't saying potentially stealing or restricting someone else's property. This permit really is property. It says the State Engineer has the authority to sever it and I don't know that's fair. Also Page 7 and a couple other areas, 61.04.04, are all areas of denial able to be appealed and have a hearing and end up in District Court if the person so chooses?

Patch: Yes, denial, all of those actions taken by the State Engineer could end up in District Court.

Chairman Porter: Page 8 Line 9, is it the right language to say "must be signed" because signing electronically is totally different than to make sure your name and address appear as part of the email? Is your intent to make sure the name and address must be by the submitter or are you looking at an electronic signature to be included in the email.

Patch: No, we're not looking for an electronic signature. We're saying I write an email and sign my name, rather than an unsigned anonymous email.

Chairman Porter: You may want to revisit that language, you're looking for the name and address of the individual not a signature.

Patch: I will do that; I think that's reasonable.

Chairman Porter: Page 10, Lines 9-10-11 cost of the transcript paid by the applicant. You have all their information and you're taking away the ability to ask for it even though they're willing to pay for it. Is that what we're doing here?

Patch: I'm trying to recall the last time we had a request. But we did have an adjudicative proceeding, brought by 3rd parties. We would provide a copy, usually now electronic. All our

records are open. Does this mean we need a court reporter every time we hold a hearing now? There's not really a transcript.

31:31

Rep. Keiser: I'm not sure this isn't correct regarding signed electronic transmission. Check with legal counsel.

Chairman Porter: I agree but I think it needs to be expanded so you have their name and address. Just a signature by itself doesn't prove anything. You need a way to make sure who you are talking to.

Rep. Marschall: You stated to prevent frivolous applications, how many have you had over the years?

Patch: You could look at the number of aps that we approve and never get developed, and now we have to go in and do cancellations, hold hearings. It's a lot of time on both ends.

Rep. Marschall: They may not be frivolous but have good intentions and change their mind.

Patch: I agree. I maybe should not have used the word frivolous. It may cut down on the ones that don't have the serious intention.

Chairman Porter: Work on those amendments and get back to me. Further support? Opposition? Closed the hearing?

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau A Room, State Capitol

SB 2090
3/15/2019
33817
☐ Subcommittee
☐ Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

relating to permits for the appropriation of water, appeals of permit applications, change in point of diversion or use, surplus water deliver and a prescriptive water right

Minutes:

Chairman Porter: One of the things we talked about was the definition, using the word inside of the code on Page 4, Line 12, fossil byproduct water. We had a concern during the hearing it was not defined. We asked them to go back and make a definition of what that is. So inside of the definitions on Page 2 Line 21 fossil byproduct water would be defined. There's the definition they came up with. From our discussions of the pore space and injections discussions, this would be down in the Dakota Formation which is somewhere between 2000 and 5000 feet deep. It's non-potable because it is high saline content water but does have some uses. It does still belong to the State of North Dakota. That was very clear as we were discussing the pore space bill. Once that fossil byproduct water is injected into the Dakota Formation it becomes the property of the State of North Dakota.

The other things brought up as we were discussing the bill on the electronic and permits and those areas.

Rep. Zubke: I'll move the amendments.

Rep. Eidson: second.

Chairman Porter: We have a motion and a second for the amendments on SB 2090. Discussion? Voice vote. Motion carried.

Rep. Ruby: I have a little heartburn about the fee increases for irrigation specifically on Page 6 Line 18 I would overstrike $500 and put back at $250. That's more than doubling.

Rep. Anderson: didn't they say fees hadn't changed in over 30 years?

Rep. Ruby: yes, I believe so because I think Rep Heinert asked that question.

Chairman Porter: the other thing I think we have to be clear on, these are not annual fees. These are the permit fees when they go after a conditional water permit. When that's perfected then it's done. It's a one-time fee to do all the work on it.

Rep. Ruby: I don't have a problem with the other one but that goes up 2.5 times what it was before. I'm just curious what others thoughts were.

Rep Heinert: when I was questioning this, they had no real reason in my mind for raising the fees $300. They used the time frame but the time frame was all across the board on this and there's other fees basically staying the same, some are doubling. This one seemed to be going up excessively compared to the other ones. I don't have an issue with raising the fees but they didn't need to raise the fees to pay for the services as well. That bothered me more than the raising the fees. I think the fees should be associated with what the costs of the state are. If $200 covers it, I don't have a problem with $100 increase to make sure we're going to cover it for the next couple bienniums.

Chairman Porter: One of the problem inside of this agency with fees, is they are running out of water resources trust fund which is tied to oil production. They aren't short on money but they also aren't long on charging those who are requesting their services. It's kind of a balancing act.

Rep. Zubke: there's absolutely no way, from my experience, that these fees are covering the cost they put in. For example, irrigation permit or an industrial permit. There's extensive man hours that go into any of those permits. The other thing you can keep in mind is there's a number of these irrigation permits that were converted to industrial permits out in the oilfield. There's a lot of people that might apply for an irrigation permit and then try to convert it also. I don't know if that practice is still being allowed but was for a period of time. I would oppose any attempt to reduce that fee. I don't think we're even coming close to covering the cost of it.

Rep. Anderson: I would pay quite a bit more money if I could get a water permit like these guys are getting. I don't think the cost is excessive. If they have the water permit they're making money.

Rep. Devlin: Is there a difference between, on Line 17, they crossed out for an irrigation and made it for irrigation use. Is there a difference between those two terms somehow?

Chairman Porter: that's what the actual use, they wanted to make sure that was clarified because of the conversion of irrigation permits to industrial permits, this is agriculture. If you want to use it for industrial, you have to come in and ask.

Rep. Anderson: does anyone have any idea how many of those permits went over to industrial?

Chairman Porter: as a temporary. We've had that presented to us in the past but I don't recall. Probably almost all of them up in that area because that turned into a whole other revenue stream that irrigated alfalfa wasn't able to compete with.

Rep. Marschall: I don't have a problem with increasing the fees as long as they're able to justify it. Listening to the testimony I didn't hear any real reason for raising them other than comparing us to SD. What other states charge is irrelevant. What we need to charge is, if they can justify because of increased labor costs, or whatever costs, go ahead and raise the rates.

Rep. Lefor: looking at John Patch's testimony, second page, he does talk about, "minor water permit application fees will remain at $250 but industrial hydraulic fracking purposes require new paradigm. The holders of industrial water permits make copious profit in the sale of waters of the state to the oil industry. The profit incentive and value of industrial water right to divert and sell waters of the state justifies the new paradigm of fee structure. The were additional fees will be $1000." That's taken directly from his testimony. It doesn't address the amount of work it takes, but basically says they've got the money so let's charge them.

Rep. Zubke: If any of you have seen the hydrologists reports that come out when these permits are applied for, you would know there are, I don't know how to tell you how many hours that go into one of those permit applications. You'd be in the thousands and thousands of dollars if you were going to try to recoup the cost going into these applications. There's no way we're even reasonably covering the cost.

Rep. Anderson: I will agree with Rep. Zubke; they monitor the water in my area. There's numerous wells within miles of my house that somebody had to drill and put those monitoring wells in. At one time there was going to be irrigation in our area so the state came in. Even though there is no irrigation there they did drill the wells and spend some money.

Rep. Lefor: move to adopt a Do Pass as Amended.

Rep. Eidson: second.

Rep. Zubke: Mr. Chairman, Rep. Eidson and I have already moved that amendment and it was carried.

Chairman Porter: withdraw this motion and let the record show that Rep. Zubke and Rep. Eidson also felt strongly and wanted to move it.

Rep. Lefor: I move a Do Pass as Amended.

Rep. Eidson: second.

Chairman Porter: we have a motion and a second for a Do Pass as Amended. Discussion? Roll call vote. 11 yes, 0 no, 3 absent. Rep. Zubke is carrier.

DP 3/15/19

19.8044.01002
Title.02000

Adopted by the House Energy and Natural Resources Committee
March 15, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

Page 2, line 21, after the underscored period insert ""Fossil byproduct water" means water obtained as a byproduct of extraction and separation from oil, gas, and other hydrocarbons, from a formation that is both not a potable aquifer at the extraction location and is situated below the deepest potable aquifer by the practically impermeable layer.

9.

Page 2, line 23, replace "9." with "10."

Page 2, line 26, replace "10." with "11."

Page 3, line 1, replace "11." with "12."

Page 3, line 3, replace "12." with "13."

Page 3, line 11, replace "13." with "14."

Page 3, line 13, replace "14." with "15."

Page 3, line 16, replace "15." with "16."

Page 3, line 17, replace "16." with "17."

Page 3, line 19, replace "17." with "18."

Page 3, line 20, replace "18." with "19."

Page 3, line 21, replace "19." with "20."

Page 3, line 23, replace "20." with "21."

Page 7, line 10, overstrike "water facilities" and insert immediately thereafter "permitholders"

Page 8, line 8, after "and" insert "mailing"

Page 8, line 9, after "electronically" insert "must state the name and mailing address of the person filing the comments, and"

Page 14, line 22, remove "Upon reasonable proof the transfer will not adversely"

Page 14, line 23, replace "affect the rights of other appropriators, the" with "The"

Renumber accordingly

Date: 3-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.8044.01002

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. Zubke Seconded By Rep Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep Bosch			Rep. Ruby		
Rep. Devlin			Rep. Zubke		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment voice vote Motion carried.

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

fossil by product water amendment

Date: 3-15-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

House Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 19.8044.01002

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 Lefor Seconded By Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep Bosch	AB		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	AB		Rep. Mitskog	AB	
			Rep. Eidson	✓	

Total (Yes) 11 No 0

Absent 3

Floor Assignment Zubke

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

fossil by product water amendment

REPORT OF STANDING COMMITTEE

SB 2090: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2090 was placed on the Sixth order on the calendar.

Page 2, line 21, after the underscored period insert ""Fossil byproduct water" means water obtained as a byproduct of extraction and separation from oil, gas, and other hydrocarbons, from a formation that is both not a potable aquifer at the extraction location and is situated below the deepest potable aquifer by the practically impermeable layer.

9.

Page 2, line 23, replace "9." with "10."

Page 2, line 26, replace "10." with "11."

Page 3, line 1, replace "11." with "12."

Page 3, line 3, replace "12." with "13."

Page 3, line 11, replace "13." with "14."

Page 3, line 13, replace "14." with "15."

Page 3, line 16, replace "15." with "16."

Page 3, line 17, replace "16." with "17."

Page 3, line 19, replace "17." with "18."

Page 3, line 20, replace "18." with "19."

Page 3, line 21, replace "19." with "20."

Page 3, line 23, replace "20." with "21."

Page 7, line 10, overstrike "water facilities" and insert immediately thereafter "permitholders"

Page 8, line 8, after "and" insert "mailing"

Page 8, line 9, after "electronically" insert "must state the name and mailing address of the person filing the comments, and"

Page 14, line 22, remove "Upon reasonable proof the transfer will not adversely"

Page 14, line 23, replace "affect the rights of other appropriators, the" with "The"

Renumber accordingly

2019 CONFERENCE COMMITTEE

SB 2090

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2090
4/11/2019
Job Number 34693

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to permits for the appropriation of water; relating to the appropriation of water; and to repeal sections relating to appeals of permit application rejections, change in point of diversion or use, surplus water delivery, and a prescriptive water right.

Minutes: No Attachments

Chairman Kreun: Opened the conference committee. All conferees were present.

Representative Zubke: The amendments we had proposed were developed by the State Water Commission. After the bill went through the Senate, they discovered a few issues to address. Primarily on page 2, the definition for fossil byproduct water, which we call brine or produced saltwater, they realized they needed that in this section of the code. On page 7, they had corrected line 11, they struck water facilities and put permit holders, but they missed that on line 13, we corrected that error. On page 8, line 10, they asked the words 'mailing address' be inserted after 'and'; on line 11, the electronic comment letters must state the name and mailing address of the person filing the permits. On page 14, line 25, we struck the words 'upon reasonable proof the transfer will not adversely affect the rights of the other appropriators.' That is ambiguous, that is something the State Engineer does go through in that process of working with those permits.

Senator Unruh: How do you sign an electronic letter; does it have to have a signature?

Representative Zubke: I'm not sure the definition of electronic letter, but I'm assuming it could include a scanned copy of a letter. There is a member of the State Water Commission here, he could address that question.

Jon Patch, Director, Water Appropriation Division, State Water Commission: When we accept comment letters on water permit applications, we do accept them if they are typed emails, as long as they have the name of the person on there, we are asking for also the mailing address, because these people that submit the comments become permanent parties of record that receive a recommended decision that we would prepare on the water permit application. They have opportunity to comment on that. We have to know where to send those. We're not worried about having a true signature, it's more the name. We can get an

email that just says, 'I object' or 'I have a problem,' and all we have is the email address, which doesn't tell us the name of the person. All we're asking for when we say signed is a name and the address of the person that is making the comment.

Senator Unruh: If you get something that is signed, but no address, do you correspond with them typically, or does that just not become part of the record?

Jon Patch: We would attempt to respond via email, asking for that information. When we have it, every comment letter, we send a response that we have received your comment to let them know that they are a party of record. We would make an attempt to identify who the individual is.

Chairman Kreun: This would make it easier to make contact back.

Jon Patch: That's correct. It also was solidifying that we can accept emails in addition to traditional letters.

Representative Ruby: could we removed the signed part of that? If you'll just accept somebody's name at the bottom of an email, if I were to submit something, I would assume that I would have to print something, sign it and upload it back in to send it in. If you are accepting just an email, does it even have to have 'signed' in there?

Jon Patch: I would have no problem if the word 'signed' was removed and it was just that we would accept the comment with the name and address. That would take out some future ambiguity that might come up.

Senator Unruh: I'm not convinced we need to make the change. After the explanation, it's now clear on the record what they intended as well, and that their practice will be as we understand it.

Senator Piepkorn: I agree with Senator Unruh.

Representative Ruby: We didn't have this discussion in the House, I could go either way.

Senator Piepkorn: I move to accede to the House amendments.
Senator Unruh: I second.

A roll call vote was taken.
Motion passes 6-0-0.

Chairman Kreun and Representative Zubke will carry.
Chairman Kreun: Closed the conference committee.

Date: 4/11
Roll Call Vote #: 1

2019 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2090 as (re) engrossed

Senate Energy and Natural Resources Committee

Action Taken
- ☒ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☐ **HOUSE recede from House amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Piepkorn Seconded by: Sen. Unruh

Senators	4/11			Yes	No	Representatives	4/11			Yes	No
Senator Kreun	X			X		Representative Zubke	X			X	
Senator Unruh	X			X		Representative Bosch	X			X	
Senator Piepkorn	X			X		Representative Ruby	X			X	
Total Senate Vote				3		Total Rep. Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Kreun House Carrier Rep. Zubke

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2090: Your conference committee (Sens. Kreun, Unruh, Piepkorn and Reps. Zubke, Bosch, M. Ruby) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 1280 and place SB 2090 on the Seventh order.

SB 2090 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

SB 2090

SB 2090
1.11.19
#1

Testimony
Senate Bill 2090 – Office of the State Engineer
Senate Energy and Natural Resources Committee
Jessica Unruh, Chairman
January 11, 2019

Chairman Unruh and members of the Energy and Natural Resources Committee, my name is Jon Patch. I am the Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. I am here in support of Senate Bill No. 2090.

This bill will modify chapter 61-04 of the Century Code which is the chapter that deals with the APPROPRIATION OF WATER. Albeit lengthy, it is mainly a housekeeping bill that cleans up and clarifies existing language, adds a few definitions, and proposes to adjust water permit fees.

SECTIONS 1, 3, 6, 7, 8, 14, 15, 16, 19, 20, 21, 26, 27, 28, 29, 30, and 32 are simply rewording and language cleanup that doesn't affect the existing meaning or intent.

SECTION 2 adjusts add a few missing definitions for "assignment", "conditional water permit", "party of record", "perfected water permit", "permitholder", "point of diversion", "priority date", and "water right".

SECTION 4 exempts reuse of fossil byproduct water from requiring a water permit. Fossil byproduct water's proposed definition in HB 1086 is that it is *not* a water of the state.

SECTION 5 adds new language to statute that explicitly codifies a practice that has been ongoing for decades and is implied in the existing

statutes and rules. It clarifies that a legal interest in the point of diversion (and place of use for irrigation permits) is required.

SECTION 9 adjusts the fee structure for conditional water applications which has not been changed since 1991. It removes the population distinction for municipal use applications making all municipal application fees $500. It increases irrigation application fees from $200 to $500.

The need for industrial water permits for hydraulic fracturing purposes requires a new paradigm for industrial water permit fees. The holders of industrial water permits make copious profit from the sale of waters-of-the-state to the oil industry. The profit incentive and value of an industrial water right to divert and sell waters-of-the-state justifies the new paradigm of fee structure for industrial use. The new paradigm proposed in this section changes the threshold of minor industrial permits, those requesting one acre-foot or less annually, to be left at $250 whereas industrial use greater than one acre-foot annually is $1000.

Recreation, livestock, or fish and wildlife application fees will remain at $100 and the category of commercial recreation, which is undefined and unused, will be eliminated.

Finally, water permit amendment application fees will be increased from $50 to $100.

Because there are also temporary water permit application fees in ND Admin Code (NDAC) 89-03-01-10.2, we were advised by legal counsel to request the desired change in fee structure to conditional water permits in statute, then, add them to NDAC. Then, request they be repealed from

statute next session. The fees for temporary water permit applications are based on the volume of water requested:

Less than one acre-foot	$75
One to ten acre-feet	$125
More than ten acre-feet	$200

SECTION 10 creates a new section of law that replaces and clarifies a portion of the language in 61-04-07 that is to be repealed. The portion of 61-04-07 this section replaces discusses *rejection* of an application and *declining to order the publication of notice* for non-compliant applications.

SECTION 11 - The additional language in Subsection 4 of 61-04-05 puts the deadline for an applicant to submit a completed affidavit of notice before the application is considered withdrawn into Century Code. That deadline is now located in Admin Code (subsection 4 of NDAC § 89-03-01-04). The goal being to drop the duplicative admin code.

The addition in Subsection 5 of 61-04-05 will put into NDCC the practice that has been used for decades of having a 30-day public comment period start on the first publication date.

SECTION 12 updates language to allow for signed electronic submission of public comments. It also specifies state engineer's potential actions of a water permit application:

- Approval of all or a portion with remainder held in abeyance or denied
- Denial
- Deferral

SB 2090
1.11.19
#1

In part, this change is requested as a result of comments made by an auditor from the state auditors office while doing a follow-up of a performance audit of the division. He stated they would've written us up because statute doesn't explicitly state we can issue a portion of an application and hold the remainder in abeyance.

SECTION 13 is intended to make minor wording changes that do not affect the intent and to remove outdated language pertaining to the creation of a certified transcript for a hearing and the costs for an original and up to nine copies to be paid for by the applicant. However, in opening up this section to these minor changes, legislative counsel applied their drafting guidelines that do not allow for an unnumbered paragraph to follow an ordered list. As such, they numbered the paragraphs and changed the schema for the criteria for the issuance of a permit. It is requested that SECTION 13 be replaced with the following:

61-04-06. Criteria for issuance of a conditional water permit.
The state engineer shall issue a conditional water permit allowing the applicant to appropriate water, provided that the commission reserves unto itself final approval authority over any specific conditional water permit in excess of five thousand acre-feet [6167409.19 cubic meters], if the state engineer finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
    a. The benefit to the applicant resulting from the proposed appropriation.
    b. The effect of the economic activity resulting from the proposed appropriation.
    c. The effect on fish and game resources and public recreational opportunities.
    d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
    e. Harm to other persons resulting from the proposed appropriation.
    f. The intent and ability of the applicant to complete the appropriation.

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~~Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre feet [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript must be paid by the applicant.~~

The above proposed language meets the legislative guidelines and accomplishes the same end without affecting the numbering schema of the criteria which has been used for decades and thousands of recommended decision documents. Also, upon further review, it was determined that "Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for a hearing is made" is unnecessary as there is no water permit application proceeding other than an adjudicative proceeding at this stage of the permitting process, therefore, that language is recommended to be stricken, as well.

SECTION 17 retains the pertinent language from proposed repealed NDCC section 61-04-07 relating to application not meeting the criteria in 61-04-06 used to approve a water permit application or portion thereof.

SECTION 18 allows state engineer to defer action on water permit applications where the information needed for sound decision making is lacking. Deferral allows the priority date of the application to be retained should the information needed to make sound decision become available at a later date. An example might be - existing users discontinue using their appropriated water - making it available for appropriation to deferred applicants or simply the gathering of additional information through processes such as AEM (airborne electromagnetic) surveys providing the information needed to make a sound scientific decision on the water permit application.

SB 2090
1.11.19
#1

SECTIONS 22 & 24 amends 61-04-15 to separate the processes of assignment of a water permit and the transfer of a water permit. SECTION 22 amends 61-04-15 to have it apply only to the assignment process. The stricken parts of 61-04-15 are added back in SECTION 24 as a new section 61-04-15.3 to apply to the transfer process.

SECTIONS 23 & 25 separate proposed repealed section 61-04-15.1 (Change in point of diversion or use) into two different sections:

61-04-15.2 Add a point of diversion (SECTION 23), and

61-04-15.4 Change in purpose of use (SECTION 25).

Original language in proposed repealed section largely remains and intent is unchanged.

SECTION 31 allows the state engineer to make non-material corrections to permits and applications beyond the three currently listed in the statute. For example, it's unclear whether the state engineer could correct an error for the period of use listed on a permit, or if the permitholder's name is not spelled correctly on the permit, or address is wrong on the permit, or the source given on the permit is misspelled, etc. These are non-material errors that are not strictly 'relative to the point of diversion, the legal description of the land to which the water is to be applied, or the quantity of water'.

SECTION 33 repeals statute sections that are either not necessary or re-enacted in this BILL.

The language in repealed NDCC 61-04-07 that pertains to the rejection of an application prior to publication of notice is addressed in SECTION 10 of

this BILL. The language in repealed NDCC 61-04-07 that pertains to the denial of an application that does not meet the criteria prescribed in NDCC 61-04-06 is addressed in SECTION 17 of this BILL. The language in repealed NDCC 61-04-07 that pertains to appealing the state engineer's decision on an application denial is unnecessary because that is addressed in the administrative hearing process under subsection 5 of section 61-04-05.1. Also, any decision by the state engineer, which can include rejection of an application, is appealable under NDCC 61-03-22.

The language in repealed 61-04-15.1 is re-enacted in its entirety under SECTIONS 23 and 25 of this BILL.

Repealed section 61-04-17 was enacted in 1905 and has largely went unchanged since then. This presently unused section of the original 1905 irrigation code allows the state engineer to compel delivery of excess water presumably in irrigation canals.

The language associated with the section can be understood by looking at original statute related to submitting a water permit application. The *1943 North Dakota Revised Code 61-04-03. Application to Acquire Right to Waters: Contents; Maps and Field Notes to Accompany*, states in part that 'The owners of works proposing to store or carry water in excess of their needs for beneficial use may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use, and shall be required to furnish the water for such parties at reasonable rates for storage, or carriage or both as the case may be.' 61-04-17 then allows the state engineer to compel delivery from the trustees. When 61-04-03 was reenacted in 1977 the above language was removed. Section 61-04-17 when reenacted in 1977 went

largely unchanged, but the language allowing state engineer to compel delivery of excess water as described in the original 1905 irrigation code and 1943 North Dakota Revised Code remained.

The proposed repealed section 61-04-22 allowed persons to submit an application for water permit and receive a prescriptive water right if water has been used since prior to July 1, 1943. The application was to be submitted by December 31, 2001. This date has long since passed and the statute is no longer applicable.

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1.11.19
#2
Pg.1

Water Permit Application Fees - Amendment History
Addendum to Jon Patch Testimony on SB 2090
Senate Energy and Natural Resources Committee
Jessica Unruh, Chairman
January 11, 2019

Use Type\Year	Before 1977	1977	1981	1989	1991	Proposed	
Municipal - Population less than 2500	$20 or less	$ 250.00	Amended include: public use	fees to Water Use Fund	$500.00	$ 500.00	
Municipal - Population less than 2500		$ 150.00			$250.00		
Irrigation		$ 100.00			$200.00	$ 500.00	
Industrial less than 1cfs		$ 150.00			$250.00	$ 250.00	Less than or equal 1 ac-ft
Industrial less than 1cfs		$ 500.00			$750.00	$ 1,000.00	Greater than 1 ac-ft
Recreation		$ 50.00	Amended to include: livestock, or fish and wildlife		$100.00	$ 100.00	
Commercial Recreation		$ 100.00				repeal	
Amendment	-	-	-	-	$ 50.00	$ 100.00	

NDAC § 89-03-01-10.2. Temporary permit fees (Effective July 1, 2014)

Volume of water requested:

Less than one acre-foot	$ 75
One to ten acre-feet	$125
More than ten acre-feet	$200

Testimony
Senate Bill 2090 – Office of the State Engineer
House Energy and Natural Resources Committee
Todd Porter, Chairman
February 28, 2019

Chairman Porter and members of the Energy and Natural Resources Committee, my name is Jon Patch. I am the Director of the Water Appropriation Division of the Office of the State Engineer/State Water Commission. I am here in support of Senate Bill No. 2090.

This bill will modify chapter 61-04 of the Century Code which is the chapter that deals with the APPROPRIATION OF WATER. Albeit lengthy, it is mainly a housekeeping bill that cleans up and clarifies existing language, adds a few definitions, adjusts water permit fees, and repeals unused and unneeded sections of statute.

SECTIONS 1, 3, 6, 7, 8, 14, 15, 16, 19, 20, 21, 26, 27, 28, 29, 30, and 32 are simply rewording and language cleanup that doesn't affect the existing meaning or intent.

SECTION 2 adds a few missing definitions for "assignment," "conditional water permit," "party of record," "perfected water permit," "permitholder," "point of diversion," "priority date," and "water right."

SECTION 4 exempts reuse of fossil byproduct water from requiring a water permit. Fossil byproduct water will be defined in administrative rules.

SECTION 5 clarifies that a legal interest in the point of diversion (and place of use for irrigation permits) is required, a practice that has been

used since time immemorial and is implied in the existing statutes and rules.

The fee adjustments in **SECTION 9** will make water permit application fees consistent with neighboring and other western states. The conditional water application fees have not been changed since 1991 (see attachment). It removes the population distinction for municipal use applications making all municipal application fees $500. It increases irrigation application fees from $200 to $500.

Minor water permit application fees will remain at $250 but industrial hydraulic fracturing purposes require a new paradigm. The holders of industrial water permits make copious profit from the sale of waters-of-the-state to the oil industry. The profit incentive and value of an industrial water right to divert and sell waters-of-the-state justifies the new paradigm of fee structure. Those industrial application fees will be $1,000.

Recreation, livestock, or fish and wildlife application fees will remain at $100 and the category of commercial recreation, which is undefined and unused, will be eliminated.

Finally, water permit amendment application fees will be increased from $50 to $100.

Temporary water permit application fees are in North Dakota Admin Code (NDAC) 89-03-01-10.2, will remain:

Less than one acre-foot	$75
One to ten acre-feet	$125

More than ten acre-feet $200

SECTION 10 creates a new section of law that replaces and clarifies a portion of the language in 61-04-07 that is to be repealed. The portion of 61-04-07 this section replaces discusses *rejection* of an application and *declining to order the publication of notice* for non-compliant applications.

SECTION 11 - The additional language in Subsection 4 of 61-04-05 puts the deadline for an applicant to submit a completed affidavit of notice before the application is considered withdrawn into Century Code. That deadline is now located in NDAC (subsection 4 of NDAC § 89-03-01-04). The goal being to drop the duplicative admin code.

The addition in Subsection 5 of 61-04-05 will put into NDCC the practice that has been used for decades of having a 30-day public comment period start on the first publication date.

SECTION 12 updates language to allow for signed electronic submission of public comments. It also specifies state engineer's potential actions of a water permit application:

- Approval of all or a portion with remainder held in abeyance or denied
- Denial
- Deferral

In part, this change is requested as a result of comments made by an auditor from the state auditors office while doing a follow-up of a performance audit of the division. He stated they would've written us up because statute doesn't explicitly state we can issue a portion of an application and hold the remainder in abeyance.

SECTION 13 is intended to make minor wording changes that do not affect the intent and to remove outdated language pertaining to the creation of a certified transcript for a hearing and the costs for an original and up to nine copies to be paid for by the applicant.

SECTION 17 retains the pertinent language from proposed repealed NDCC section 61-04-07 relating to application not meeting the criteria in 61-04-06 used to approve a water permit application or portion thereof.

SECTION 18 allows state engineer to defer action on water permit applications where the information needed for sound decision making is lacking. Deferral allows the priority date of the application to be retained should the information needed to make sound decision become available at a later date. An example might be - existing users discontinue using their appropriated water - making it available for appropriation to deferred applicants or simply the gathering of additional information through processes such as AEM (airborne electromagnetic) surveys providing the information needed to make a sound scientific decision on the water permit application.

SECTIONS 22 & 24 amends 61-04-15 to separate the processes of assignment of a water permit and the transfer of a water permit. SECTION 22 amends 61-04-15 to have it apply only to the assignment process. The stricken parts of 61-04-15 are added back in SECTION 24 as a new section 61-04-15.3 to apply to the transfer process.

SECTIONS 23 & 25 separate proposed repealed section 61-04-15.1 (change in point of diversion or use) into two different sections:

61-04-15.2 Add a point of diversion (SECTION 23), and

61-04-15.4 Change in purpose of use (SECTION 25).

Original language in proposed repealed section largely remains and intent is unchanged.

SECTION 31 allows the state engineer to make non-material corrections to permits and applications beyond the "point of diversion, the legal description of the land to which the water is to be applied, or the quantity of water" currently listed in the statute. For example, if the permitholder's name is not spelled correctly on the permit, or address is wrong on the permit, or the source given on the permit is misspelled, etc.

SECTION 33 repeals statute sections that are either not necessary or re-enacted in this BILL.

The language in repealed NDCC 61-04-07 that pertains to the rejection of an application prior to publication of notice is addressed in SECTION 10 of this BILL. The language in repealed NDCC 61-04-07 that pertains to the denial of an application that does not meet the criteria prescribed in NDCC 61-04-06 is addressed in SECTION 17 of this BILL. The language in repealed NDCC 61-04-07 that pertains to appealing the state engineer's decision on an application denial is unnecessary because that is addressed in the administrative hearing process under subsection 5 of section 61-04-05.1. Also, any decision by the state engineer, which can include rejection of an application, is appealable under NDCC 61-03-22.

The language in repealed 61-04-15.1 is re-enacted in its entirety under SECTIONS 23 and 25 of this BILL.

Repealed section 61-04-17 was enacted in 1905 and has largely went unchanged since then. This presently unused section of the original 1905 irrigation code allows the state engineer to compel delivery of excess water presumably in irrigation canals.

The language associated with the section can be understood by looking at original statute related to submitting a water permit application. The *1943 North Dakota Revised Code 61-04-03. Application to Acquire Right to Waters: Contents; Maps and Field Notes to Accompany*, states in part that 'The owners of works proposing to store or carry water in excess of their needs for beneficial use may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use, and shall be required to furnish the water for such parties at reasonable rates for storage, or carriage or both as the case may be.' 61-04-17 then allows the state engineer to compel delivery from the trustees. When 61-04-03 was reenacted in 1977 the above language was removed. Section 61-04-17 when reenacted in 1977 went largely unchanged, but the language allowing state engineer to compel delivery of excess water as described in the original 1905 irrigation code and 1943 North Dakota Revised Code remained.

NDCC section 61-04-22 allowed persons to submit an application for water permit and receive a prescriptive water right if water has been used since prior to July 1, 1943. The application was to be submitted by December 31, 2001. This date has long since passed and the statute is no longer applicable.

Water Permit Application Fees - Amendment History
Addendum to Jon Patch Testimony on SB 2090
House Energy and Natural Resources Committee
Todd Porter, Chairman
February 28, 2019

Use Type\Year	Before 1977	1977	1981	1989	1991	Proposed	
Municipal - Population less than 2500	$20 or less	$ 250.00	Amended include: public use	fees to Water Use Fund	$500.00	$ 500.00	
Municipal - Population less than 2500		$ 150.00			$250.00		
Irrigation		$ 100.00			$200.00	$ 500.00	
Industrial less than 1cfs		$ 150.00			$250.00	$ 250.00	Less than 1 ac-ft
Industrial less than 1cfs		$ 500.00			$750.00	$ 1,000.00	Greater than 1 ac-ft
Recreation		$ 50.00	Amended to include: livestock, or fish and wildlife		$100.00	$ 100.00	
Commercial Recreation		$ 100.00				repeal	
Amendment	-	-	-	-	$ 50.00	$ 100.00	

NDAC § 89-03-01-10.2. Temporary permit fees (Effective July 1, 2014)

Volume of water requested:

Less than one acre-foot	$ 75
One to ten acre-feet	$125
More than ten acre-feet	$200

SB 2090
2.28.19
Attachment 1

Water Permit Fees by State

Arizona		
Application	$1,000	Initial
	$10,000	Maximum
	Dept billing at $118/hr	
California		
One-Time Fee		
Application	$1000 + $15 per acre-foot over 10 acre-feet	
Temporary Application	$1000 to $5000 minimun	
Annual Fee		
Permit Fee	$225 + $0.073 per acre-foot over 10 acre-feet	
Application Fee	$750 + 0.073 per acre-foot over 10 acre-feet	
Colorado		
Application	$100	
Chage in point of diversion	$100	
Idaho		
Application	$100 to >$6610	
Examples:	800 gpm	$290
	1600 gpm	$370
	2400 gpm	$450
	3200 gpm	$530
Kansas		
Application	$200	<100 acre-feet
	$300	101 to 320 acre-feet
	$300	>320 acre plus $20 for each additional 100 acre-feet or any part thereof
Minnesota		
Application	$150	non public supply
	$150-$1000	public supply
	$150	Dam Construction
Annual Fee	>$140	Based on appropriation
Montana		
Application	$600-$1000	>35 gpm (~56 acre-feet)
	$200	<35 gpm (~56 acre-feet)
Change in Water Right	$700-$900	
Extension of Time	$200	
Replace point of diversion	$400	
Nebraska		
Application	$10	Domestic
	$200	Irrigation from Stream <1000 acres
	$50	Irrgation from Reservoir
	$10	Manufacturing-General
	$5	Power Generation per 5hp
	$10	Manufacturing-Other
Nevada		
Application	$360	
Correction	$100	
Dam Application	$1,200	
Change in Point of Diversion	$240	
Temporary Change in Point of Diversion	$180	
Recording Permit	$360 plus $3/acre-feet approved	
Rate Increase on Well	$1,000	
New Mexico		
Application	$25	Irrigation, Municipal, Commercial
	$5	Stock or Temporary
Change in Purpose of Use	$75	
Change in Point of Diversion	$50	
Extension of Time	$25	
Change in Point of Diversion surface water	$100	
Oklahoma		
Application	$250	0-320 acre-feet

	$350	321-640 acre-feet
	$450	640-1500 acre-feet
	$450+ $150/500 acre-feet	>1500 acre-feet
	$4,000	Maximum
Oregon		
Application	$930 + $350/cfs	Surface Water
	$1340 +$350/cfs	Ground Water
Filing Fee	$520	Upon application approval
South Dakota		
Application	$500	<120 acre-feet
	$250	next 120 acre-feet or portion thereof
	$100	Each 120 acre-feet or portion thereof
	$200	Licensing Inspection
	$50	Vested Water Right
Texas		
Application	$100	<100 acre-feet
	$250	100-5000 acre-feet
	$500	5001-10000 acre-feet
	$1,000	10001-250000 acre-feet
	$2,000	>250000 acrefeet
Temporary Application	$100	<10 acre-feet
	$250	>10 acre-feet
Amendment	$100	
Utah		
Application	$150 to $1000	
Washington		
Application	$1 per 0.01 cfs (4.5 gpm)	
	$50	Minimum
	$25,000	Maximum
Temporary Application	$50	
Extension of Time	$50	
Assignment	$50	
Water Right Certificate	$50	
Wyoming		
Application	$75	
Temporary Application	$50	
Dams	$100 to $150	

Example Water Permit Application for Irrigation
1 quarter section (200 acre-feet, 133 acre pivot, 900 gpm)

State	Application Fee	Annual Rate	Inspection Fe	Total
CA	$3,850	$239		$4,089
OR	$2,040			$2,040
NV	$350		$780	$1,130
AZ	$1,000			$1,000
SD	$667		$200	$867
MT	$800			$800
MN	$150	$228		$378
UT	$350			$350
KA	$300			$300
ID	$290			$290
NE	$200			$200
TX	$250			$250
OK	$250			$250
ND	$200			$200
WA	$200			$200
CO	$100			$100
WY	$75			$75
NM	$25			$25