

**ARTICLE 89-01
GENERAL ADMINISTRATION**

Chapter
89-01-01 Organization of Water Commission and Department of Water Resources

**CHAPTER 89-01-01
ORGANIZATION OF WATER COMMISSION AND DEPARTMENT OF WATER RESOURCES**

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89-01-01-01. History.

The office of the state engineer was established in 1905. As initially created, the state engineer had many responsibilities, including as an ex-officio state coal mine inspector, as well as the chief engineer and secretary for the newly created highway commission. Eventually the state engineer's focus shifted to water-oriented responsibilities.

The water commission was created as a separate state agency in 1937, as an emergency measure during the prolonged drought. The law originally provided the state engineer was the commission's chief technical adviser, but that such responsibilities would be in addition to the engineer's regular duties as state engineer. In 1941, the law was amended to provide the state engineer would be the commission's secretary and chief engineer.

From 1937 through approximately 1977, the legislative assembly often vested either the water commission or state engineer with particular authority regarding water-related issues without any expressed reason or clear consistency. This commingling of regulatory authority created confusion, and likely led to the convention of referring to both the water commission and the office of the state engineer collectively as the commission. Finally in 1981, the legislative assembly passed a bill amending several sections and chapters of law to clarify the intent that:

[w]henver the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding [regulatory duties, those terms] shall be construed as granting full administrative and enforcement authority to the state engineer.

1981 N.D. Sess. Laws ch. 365 § 6. As such, the office of state engineer, rather than the water commission, was the agency charged with enforcing most water-related regulations.

In August 2021, House Bill No. 1353 of the sixty-seventh legislative assembly replaced the office of the state engineer with the department of water resources, which is led by a director. The department's primary functions are to promote statewide water management policies, enforce water-related regulations, and provide staff and engineering services for commission initiatives.

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989; December 1, 1989; February 1, 1992; February 1, 1993; April 1, 1994; December 1, 1997; February 1, 2003; April 1, 2014; January 1, 2023.

General Authority: NDCC 61-02-11, 61-03-13

Law Implemented: NDCC 61-02-11, 61-03-13

89-01-01-02. Water commission organization and functions.

1. **Commissioners.** North Dakota Century Code section 61-02-04 regulates commission membership. Two commissioners, the governor and the agriculture commissioner, are

statewide officials elected for four-year terms. Eight commissioners representing the eight major drainage basins are appointed by the governor for staggered six-year terms. Under North Dakota Century Code section 61-02-05, the governor is the commission's chairman, and the governor designates a vice chairman.

2. **Commission secretary.** From 1941 through July 2021, the state engineer was the commission's statutory secretary. On August 1, 2021, the director of the department of water resources became the commission's statutory secretary. The secretary assists the commission by coordinating commission operations and relieving individual commissioners of administrative detail.
3. **Commission functions.** The commission's primary functions are to review and consider cost-share requests from project sponsors seeking financial assistance, and to foster and promote water resources development throughout the state, including southwest pipeline project construction, northwest area water supply project construction and operation, and operation and maintenance of the Devils Lake outlets.

History: Effective January 1, 2023.

General Authority: NDCC 61-02-11

Law Implemented: NDCC 61-02-14

89-01-01-03. Department of water resources organization and functions.

1. **Director.** The department is now headed by the director, who is a member of the governor's cabinet. The director provides overall leadership and decisionmaking, has hiring responsibilities, and oversees the department staff. The director also acts as a liaison between the department and the legislative and executive branches of state government, as well as a liaison between the governor and the federal government on water-related issues.
2. **State Engineer.** The state engineer, under North Dakota Century Code section 61-03-01.3, is responsible for associated technical duties related to public safety and property protection, including dam safety, water appropriations, and construction and drainage permits. The state engineer also may act as the director's designee at the director's discretion when implementing any provision of this title.
3. **Department functions.** The department consists of several divisions, with the division directors reporting to the department's director. Several of the divisions are responsible for providing staff support to the commission functions, including management of the cost-share assistance program; maintaining a water project inventory and water development plan; representing the commission on regional, national, and international natural resources planning bodies; assisting water resource boards; preparing engineering and feasibility reports and designs for construction, maintenance, and major repair of water resources projects throughout the state; and general accounting, budgeting, information technology, and support services.

Other divisions are responsible for assisting and advising the director and the state engineer in state law, administrative rule, and policy enforcement. The responsibilities of these regulatory enforcement divisions include reviewing and making recommendations on permit applications for drains, dikes, dams, and sovereign lands; administering the state's dam safety program; assisting communities with floodplain management; conducting navigability determinations and ordinary high water mark delineations; conducting analysis and providing recommended decisions on water permit applications; monitoring and balancing water use and availability throughout the state; enforcing the water permitting system; and developing and maintaining permit records.

The commission also supervises the atmospheric resources board, which is a quasi-judicial, quasi-legislative advisory and rulemaking board that functions as a division of the department. The atmospheric resources board licenses weather modification contractors and permits cloud seeding operations and research activities; conducts research into atmospheric research and cloud seeding technology; and monitors, collects, and disseminates precipitation and climate data.

History: Effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-01.3