

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1107  
(Energy and Natural Resources Committee)  
(At the request of the State Engineer)

AN ACT to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to definitions and informational and adjudicative proceedings on a water permit application.

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

**SECTION 1. AMENDMENT.** Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-01.1. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative proceeding" as defined under chapter 28-32 provides for an appeal of a recommended decision prepared by the state engineer for a water permit application.
2. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
- ~~2-3.~~ "Commission" means the state water commission.
- ~~3-4.~~ "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for ~~noncommercial~~ gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.
- ~~4-5.~~ "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
- ~~5-6.~~ "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- ~~6-7.~~ "Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.
8. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
- ~~7-9.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.

- 8-10. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
- 9-11. "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
- 10-12. "Rural water system" means a water supply system designed to serve regional needs.
- 11-13. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

**SECTION 2. AMENDMENT.** Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.

**SECTION 3. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05.1. Comments - Hearing.**

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. A person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use water facilities request the informational hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
- 3-5. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request a hearingan adjudicative proceeding on the application, or both. A request for a hearingan adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the hearingproceeding. If a request for a hearingan adjudicative proceeding is

not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a ~~hearing~~ adjudicative proceeding is made, ~~or~~ and if the state engineer determines a ~~hearing~~ adjudicative proceeding is necessary to ~~obtain additional information to evaluate the application or to receive public input~~, the state engineer shall designate a time and place for the ~~hearing~~ adjudicative proceeding and serve a copy of the notice of ~~hearing~~ adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

4. ~~If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.~~

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1107.

House Vote:    Yeas 92            Nays 0            Absent 2

Senate Vote:    Yeas 45            Nays 0            Absent 2

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State