

SENATE ENGERGY AND NATURAL RESOURCES COMMITTEE
HB 1353
MARCH 18, 2021

I am Loren DeWitz. I have been involved with water development in North Dakota since the 1960's as an active irrigator for more than 50 years, a member of a County Water Resource Board for over 40 years, and Assessor for Central Dakota Irrigation District that established 83 center pivot irrigators in Kidder, Logan, and Stutsman Counties. I have also been involved with several organization that promote irrigations and water development. I presently serve as Chairman of the North Dakota Irrigation Assn and as Chairman of the Board of Water Well Contractors.

I have worked with several Water Commission staff members over the years, on "issues" during both wet and dry cycles. My concern with HB 1353 is that it removes a technically trained individual from the final decision-making process and replaces that person with a Director who does not have to have any technical training.

Presently the State Engineer is appointed by the State Water Commission. The NDCC 61-03-01 states: "A state engineer shall be appointed by the state water commission. Such engineer shall be a technically qualified and experienced hydraulic engineer and also shall be an experienced irrigation engineer. The State Engineer shall serve as secretary and chief engineer of the commission...."

HB 1353, on page 2, line 15, eliminates the Office of State Engineer. Pages 21 and 22 establishes the Department of Water Resources and adds a Director appointed by the Governor. The rest of the bill removes the State Engineer from all sections of NDCC where he has authority to make decision on Water Resource Management.

The new Director will not have to be technically qualified or have any experience in water development. Also, the Director would not serve as Secretary or Chief Engineer of the Water Commission.

The attached pages 2-7 lists all of the sections of HB 1353. I have highlighted several areas on those pages where there needs to be a trained and experienced engineer making the final decisions. Such areas are:

Flood Plains Designation	Appropriation of Water
Drainage (Surface & Subsurface)	Water Permits and Rights
Water Supply Districts	Water Well Design
Dam Construction	Wellhead Protections
Reservoir Management	Water Course Management
Hydrographic Surveys	High Water Marks
Ground Water Monitoring	

There are many areas in water development where the State Engineer needs to be the final decision maker.

I ask for a Do Not Pass Vote on HB 1353.

CHAPTER 61-03 STATE ENGINEER

✓ 61-03-01. State engineer - Appointment - Qualifications - Term - Salary - Engaging in private practice.

A state engineer shall be appointed by the state water commission. Such engineer shall be a technically qualified and experienced hydraulic engineer and also shall be an experienced irrigation engineer. The state engineer shall serve as secretary and chief engineer of the commission. Such engineer shall hold the office for such term as the commission may determine, and the commission shall fix the state engineer's salary and shall allow the state engineer's actual and necessary traveling expenses while away from the office in the discharge of official duties. The state engineer shall not engage in private practice but shall devote all of the state engineer's time to the duties and requirements of the office.

✓ 61-03-02. Oath of state engineer.

Before entering upon the duties of office, the state engineer shall take the oath prescribed for civil officers.

61-03-03. Auditing of claims.

All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under the state engineer's direction and supervision shall be approved by the state engineer.

61-03-04. Biennial report.

The state engineer may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

61-03-05. Fees of state engineer.

Repealed by S.L. 2015, ch. 471, § 4.

✓ 61-03-05.1. Deposit of certain fees in special fund - Purposes of fund.

All fees collected by the state engineer pursuant to sections 61-04-04.1 and 61-04-06.2 shall be deposited in the state treasury in a special fund to be known as the water use fund, and shall be used only for planning, research, and administration required to properly regulate the allocation and appropriation of the waters of North Dakota. The water use fund may be expended subject to appropriation by the legislative assembly for the purpose of meeting the costs directly incurred in conducting the planning and administration required for the proper regulation of the allocation and appropriation of the waters of the state.

61-03-06. Records of state engineer - Open to public - Contents - Certified copies as evidence.

The records of the office of the state engineer are public records, shall remain on file in the state engineer's office, and shall be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the state engineer shall be evidence equally with the originals thereof, and when introduced as evidence shall be held as of the same validity as the originals.

61-03-07. Investigations and reports for board of university and school lands.

Repealed by S.L. 1989, ch. 747, § 1.

Regulatory Role (if checked maintain reference to SE)	Section of HB 1353	NDCC Reference	Title/Description of the section
	1	4.1-01-18	Environmental Law Review Committee Membership
✓	2	4.1-35-0.1	Definitions of the State Engineer
✓	3	4.1-35-04	Inspections of Chemigation
✓	4	4.1-35-05	Right to Enter Property for Inspections
✓	5	11-33.2-12.1	Plat of Flood Plains Designated by the State Engineer
	6	23.1-01-02	Environmental Review Advisory Council Membership
	7	23.1-08-13	Site Review of Solid Waste Disposal Facility
✓	8	23.1-11-06	Ground Water Quality Monitoring
✓	9	23.1-11-10	Wellhead Protection Program
	10	23.1-11-11	Ag Commissioner Rules
	11	24-03-06	Highway Ditches
	12	24-03-08	Surface Water Flow and Highway Construction
	13	24-06-26.1	Township Road Standards
✓	14	37-17.1-11	Possible Land Shifting During Flooding
	15	38-14.1-03	Quality and Quantity of Water Affected by Surface Mining
	16	38-14.1-14	Surface and Pit Drainage Discharge
	17	38-14.1-21	Reclaiming Surface Mined Lands
	18	38-14.1-24	Water Impoundments on Reclaimed Mined Lands
	19	38-14.1-25	Use of Waste Piles From Mined Lands
	20	38-23-08	Radioactive Waste Advisory Council
	21	40-50.1-01	Plats Showing 100 Year Floodplain
✓	22	43-35-03	State Board of Water Well Contractors Membership
	23	54-57-03	Administrative Hearings
	24	57-02-08.6	Funds Received For Wetlands Property Tax Exemption
	25	57-28-09	Tax Deeds on Assessed Property
✓	26	61-01-01	Noncontributing Drainage Areas
✓	27	61-01-03	Claims to Water Prior to and after March 1905
✓	28	61-01-05	Reclaiming Water turned Into a Watercourse
✓	29	61-01-06	Watercourse Definition
	30	61-01-25	Penalty for Violation
	31	61-02-05	Chairman of Water Commission
	32	61-02-14.2	Water Commission Contracts
	33	61-02-23.3	Devil's Lake Outlet Authorization and Agreement

	34	61-02-26	Intrastate Use or Disposition of Waters
✓	35	61-02-27	Proposals for use or Disposition of Waters
✓	36	61-02-30	Commission Acquiring Water Rights
✓	37	61-02-32	Modification of plans to appropriate water
✓	38	61-02-33	Declaration of completion and beneficial use of water
✓	39	61-02-41	Surveys for the diversion of waters
	40	61-02-68.10	Execution of Interim Financing Notes
	41	61-02.1-01	Authority to issue bonds
	42	61-03-01.1 (new language)	Department of Water Resources Established
	43	61-03-01.2 (new language)	Definitions
	44	61-03-01.3 (new language)	Director powers and duties
	45	61-03-03	Approval of claims
	46	61-03-04	Biennial report under NDCC 54-06-04
	47	61-03-06	Records of department
	48	61-03-08	Duty to cooperate with county commissioners
	49	61-03-10	Custodian of government plats
	50	61-03-12	Legal counsel for department
	51	61-03-13	Rulemaking authority
	52	61-03-14	Commission votes on modification of rules
✓	53	61-03-15	Hydrographic surveys and investigations
	54	61-03-16	Suit for adjudication of water rights
	55	61-03-17	Costs of suit for adjudication of water rights
	56	61-03-18	Hydrographic survey use funds
	57	61-03-19	Decree adjudication water rights-filing
	58	61-03-20	Cooperation with USGS
✓	59	61-03-21	Plans of operation for reservoirs
	60	61-03-21.1	Inspection by department
	61	61-03-21.2	Notification and removal of unsafe or unauthorized works
	62	61-03-21.3	Removal or modification of danger in navigable waters
	63	61-03-21.4	Economic analysis of certain projects
	64	61-03-22	Appeals from decision of department
	65	61-03-23	Penalties-civil
	66	61-03-24	Pending administrative actions and permits
	67	61-03-25	Emergency action plans for high and medium hazard dams
	68	61-04-01	Petitions, reports and surveys filed with commission
✓	69	61-04-01.1(1)	Appeal of water permit application decision
✓	70	61-04-01.1(15)	Perfected water permit

✓	71	61-04-02	Permit for beneficial use of water
✓	72	61-04-02.2	Emergency or temporary use of water
✓	73	61-04-02.2	Property interest required to hold a water permit
	74	61-04-03	Water permit application-contents
✓	75	61-04-03.1	Limitation on amount of water for irrigation
	76	61-04-04	Filing and correction of application
	77	61-04-04.1	Application fees for water permit
	78	61-04-04.2	Refund of application fees
	79	61-04-04.3	Rejection of applications
	80	61-04-05	Notice of application-contents-proof
	81	61-04-05.1	Comments-hearing regarding a proposed appropriation
✓	82	61-04-06	Criteria for issuance of permit
	83	61-04-06.1	Priority of use in granting water permits
✓	84	61-04-06.2	Terms of permit
	85	61-04-06.3	Priority in time of water rights
✓	86	61-04-07.2	Water permit application denial
✓	87	61-04-07.3	Water permit application deferral
✓	88	61-04-09	Beneficial use-inspection-perfected water permit
✓	89	61-04-11	Inspection of works
	90	61-04-12	Use of unsafe works-penalty
	91	61-04-14	Extending time for application of beneficial use
✓	92	61-04-15	Assignment of conditional or perfected permit
✓	93	61-04-15.2	Add point of diversion
✓	94	61-04-15.3	Transfer of approved irrigated acreage
✓	95	61-04-15.4	Change in purpose of use
✓	96	61-04-23	Cancellation of water rights
✓	97	61-04-24	Cancellation of water rights
	98	61-04-25	Cancellation of water rights-hearing
	99	61-04-26	Recording of water permit
	100	61-04-27	Annual filing of water use
	101	61-04-28	Correction application of water right
	102	61-04-29	Enforcement of unauthorized water use
	103	61-04-30	Penalty for unauthorized water use
	104	61-04-31	Reservation of waters
	105	61-04.1-04	ND atmosphere resource board membership
	106	61-05-01	Definition of irrigable lands
	107	61-05-07	Petition for a proposed irrigation district
	108	61-05-08	Map of proposed irrigation district
	109	61-05-09	Bond for proposed irrigation district
	110	61-05-10	Hearing on petition for proposed irrigation district

	111	61-05-11	Amendment of plan for irrigation district
	112	61-05-12	Denying petition for irrigation district
	113	61-05-13	Order establishing irrigation district
	114	61-05-14	Notice of election for irrigation district
	115	61-05-15	Form of notice of election
	116	61-05-16	Appointment of judges and clerk for election
	117	61-05-17	Conduct of election
	118	61-05-18	Certification of election
	119	61-05-19	Filing order of organized irrigation district
	120	61-05-20	Appeal decision to district court
	121	61-06-01	Board of directors of irrigation district terms
	122	61-06-03	Oath and bonds of board of directors
	123	61-06-04	Meeting of directors
	124	61-06-05	Bonds of assessor, treasure, and employees
	125	61-06-19	Declaring results of election
	126	61-07-08	Plans to determine cost of construction
	127	61-07-14	Petition for change in canals or other systems
	128	61-07-27	Conclusion of hearing-findings-decree
	129	61-09-02	District assessor list of map of assessments
	130	61-10-27	Board may include lands in district
	131	61-10-30	Result of election of land inclusion
	132	61-10-35	Order excluding lands
	133	61-10-37	Result of election excluding lands
	134	61-11-04	Conduct of election-canvassing and reporting
	135	61-11-08	Sale of property after dissolution
	136	61-11-09	Appraisal of property for sale
	137	61-11-15	Report of dissolution
✓	138	61-12-46	Assistance to county board of flood irrigation
✓	139	61-14-01	Units of measure
✓	140	61-14-03	Amount of water for irrigation
✓	141	61-14-06	Measuring devices
	142	61-14-07	Unlawful interference with rights to use water
✓	143	61-14-13	Seepage water
	144	61-15-03	Water and wildlife conservation projects
	145	61-15-09	Conservation of water in turtle mountain region
	146	61-16-0.6.1	Consolidation of water resource districts
	147	61-16.1-09.1	Water resource board assessments
	148	61-16.1-23	Appeal of water resources board assessments
	149	61-16.1-37	Structural and nonstructural solutions to water problems
✓	150	61-16.1-38	Permit to construct or modify dam
✓	151	61-16.1-39	Water resource board control of dam
	152	61-16.1-53.1	Appeal of board decisions

	153	61-16.2-01	Legislative intent and purpose-floodplains
	154	61-16.2—2	Definitions
✓	155	61-16.2.03	Duties of state engineer-floodplains
✓	156	61-16.2-04	Delineation of floodplains and floodways
	157	61-16.2-05	Floodplain management ordinances
	158	61-16.2-09	Community floodplain management
	159	61-16.2-11	Authority to enter and investigate
	160	61-16.2-13	Flood insurance
	161	61-16.2-14	Review of development in floodways
✓	162	61-20-02	Drilling artesian or flowing wells
✓	163	61-20-03	Wild wells
✓	164	61-20-06	Duties of state engineer concerning flowing wells
	165	61-20-07	Enforcement of chapter and appeal
✓	166	61-21-02.1	Assessment drain culverts
	167	61-21-22	Hearing on assessment-appeal-relocating drain
	168	61-21-34	Construction of drain through two counties
	169	61-24-07	Attorney shall act as legal advisor
	170	61-24.3-01	Legislative intent-southwest pipeline
	171	61-24.5-01	Declaration of policy-southwest pipeline
	172	61-24.5-18	Easement granted-southwest pipeline
	173	61-24.6-01	Declaration of policy-northwestern pipeline
	174	61-24.6-02	Northwest area water supply committee
	175	61-24.6-03	Northwest area water-officers-meetings
✓	176	61-24.6-05	Employment of staff
	177	61-24.8-01	Definitions-garrison diversion conservancy district
✓	178	61-24.8-18	Appeal of assessments for projects
	179	61-29-04	Administration of little Missouri River Commission
	180	61-31-02	State assessment team
✓	181	61-32-03	Permit to drain waters required-penalty
✓	182	61-32-03.1	Permit to drain subsurface waters
✓	183	61-32-08	Appeal-closing of noncomplying drains
	184	61-33-01	Definitions
✓	185	61-33-01.1	Ordinary high water mark determination
	186	61-33-02	Administration of sovereign lands
	187	61-33-03	Transfer of interests in real property
	188	61-33-05	Duties and powers to operate real property
✓	189	61-33—05.1	Navigability determinations
	190	61-33-07	Deposit of income
	191	61-33-08	Sovereign lands advisory board responsibility
	192	61-33-09	Sovereign lands board membership-meetings
	193	61-33-10	Penalty for violations

	194	61-33.1-07	Regulatory jurisdiction-missouri river
	195	61-34-04	Definitions-disaster livestock water program
	196	61-34-04	Applications for assistance-disaster livestock water
	197	61-35-01	Definitions- water supply district
	198	61-35-02	Petition to organize a water district
	199	61-35-02.1	Conversion of water supply from water resources district to water district
	200	61-35-04	Hearing for organization of water district
	201	61-35-05	Notice of hearing
	202	61-35-07	Findings of hearing
	203	61-35-08	Meetings-election of board
✓	204	61-35-16	Plans and specifications of water supply district
✓	205	61-35-18	Inclusion of property in district
	206	61-35-20	Exclusion from district
	207	61-35-21	Inactive district dissolved
	208	61-35-22	Hearing of petition under section 61-35-21 and 61-35-22
	209	61-35-23	Disposition of assets of dissolved district
	210	61-35-25	Operation by non profit corporation or cooperative district
	211	61-35-63	Appeal of assessments of district
	212	61-38-01	Definitions consistent with federal law
	213	61-38-02	Powers under clean water act
	214	61-38-03	Permits from department of health
	215	61-38-04	Specification of disposal sites
	216	61-38-05	Discharge of dredged or fill material
	217	61-38-06	Permits for discharged dredged or fill material
	218	61-38-07	Emergency permits
	219	61-38-08	Permit-notice-hearing
	220	61-38-09	Proceedings
	221	61-38-10	Penalties
	222	61-38-11	Restoration of dredged or filled areas
	223	61-39-01	Legislative findings and declaration of policy
	224	61-40-09	Easement for pipeline on any public lands