

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1074
(Energy and Natural Resources Committee)
(At the request of the Department of Water Resources)

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 informational hearings for water permit applications.

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" means an appeal under chapter 28-32 of a recommended decision prepared by the director of the department of water resources for a water permit application.
2. "Assignment" means the change of a water permit from one permitholder to another permitholder.
3. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
4. "Commission" means the state water commission.
5. "Conditional water permit" means a water permit that has not been perfected.
6. "Domestic use" means the use of water by at least one family unit or household obtaining water from the same system 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 each family unit or household 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.
7. "Fish, wildlife, and other recreational uses" 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.
8. "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. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
10. ~~"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.~~
11. "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

shrubby, 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.

- ~~42.11.~~ "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- ~~43.12.~~ "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.
- ~~44.13.~~ "Party of record" means a person who filed written comments by the date specified under subsection 5 of section 61-04-05.
- ~~45.14.~~ "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the department of water resources has inspected the works to verify all conditions have been met.
- ~~46.15.~~ "Permitholder" means the name of the entity holding a water permit.
- ~~47.16.~~ "Point of diversion" means the tract of land where the waters of the state are withdrawn or diverted.
- ~~48.17.~~ "Priority date" means the date assigned to an application or water right.
18. "Public 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.
19. "Rural water system" means a water supply system designed to serve regional needs.
20. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.
21. "Water right" means the right established under this title to appropriate or store waters of the state.

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~~ public hearing regarding the proposed appropriation must be filed with the department of water resources. The notice also must state anyone who files written comments with the department will be mailed the department's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.

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 department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments.

Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.

2. A person filing written comments also may request ~~an informational~~ public hearing ~~on the application for the department to obtain additional information to evaluate the application or to receive public input~~ by the date specified by the department of water resources under subsection 5 of section 61-04-05. If a request for an ~~informational~~ public hearing is made and the department determines an ~~informational~~ public hearing is necessary ~~to obtain additional information to evaluate the application or to receive public input~~, the department shall designate a time and place for the ~~informational~~ public hearing and serve a 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 permitholders request the ~~informational~~ public hearing to be held locally, the department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The department of water resources shall consider all written comments received and testimony presented at an ~~informational~~ public hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:
 - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;
 - b. Denial of the application; or
 - c. Deferral of the application.
5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the department of water resources or request an adjudicative proceeding on the application, or both. A request for an 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 proceeding. If a request for an adjudicative proceeding is not made, the department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made and the department determines an adjudicative proceeding is necessary, the department shall designate a time and place for the adjudicative proceeding and serve the notice of 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1074.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State