

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1073

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1073
1/12/2023

Relating to the Department of Water Resources authority to require operating plans for dams

2:30 Chairman Porter opened the hearing, roll call was taken and the bill was read

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Roers Jones, and Ruby.

Members absent: Representative Kasper and J. Olson

Discussion Topics:

- Operations of Reservoirs

Aaron Carranza- Director of the Regulatory Division of the Department of Water Resources- Testifies in favor of HB 1073 (Testimony # 12971)

2:35 Representative Porter -closed the hearing for HB 1073

Representative Dockter- Move for a Do Pass

Representative Novak- Seconds the motion.

Roll call Vote:

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	A
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	A
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

Motion Passes 12-0-2 Representative Heinert will carry the bill

House Energy and Natural Resources Committee

HB 1073

Jan 12th 2023

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2:23 Chairman Porter- Closes the meeting for HB 1073

Kathleen Davis, Committee Clerk by Risa Berube

REPORT OF STANDING COMMITTEE

HB 1073: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB
1073 was placed on the Eleventh order on the calendar.

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1073

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1073
3/2/2023

A bill relating to the department of water resources authority to require operating plans for dams.

9:44 AM Chairman Patten opened the meeting.
Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum were present.

Discussion Topics:

- Regulations
- Water storage
- Operating plans
- Reservoirs
- Cutoffs
- Water use permits

9:46 AM Aaron Carranza, Director of the Regulatory Division of the Department of Water Resources Department introduced the bill and provided written testimony #21643.

9:51 AM Chairman Patten closed the public hearing.

9:51 AM Senator Kannianen moved to Do Pass the bill. Motion seconded by Senator Beard.

9:52 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passed 6-0-0.

Senator Boehm will carry the bill.

This bill does not affect workforce development.

9:53 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1073: Energy and Natural Resources Committee (Sen. Patten, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB
1073 was placed on the Fourteenth order on the calendar. This bill does not affect
workforce development.

TESTIMONY

HB 1073

Testimony
House Bill 1073 – Department of Water Resources
House Energy and Natural Resources
Representative Todd Porter, Chairman
January 12, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee - I am Aaron Carranza, Director of the Regulatory Division of the Department of Water Resources (Department). I am here today to provide you an overview of House Bill 1073, which would amend and reenact section 61-03-21 of the North Dakota Century Code (N.D.C.C.). This bill is part of the governor's overall red-tape reduction initiative by proposing to remove unnecessary regulations.

N.D.C.C. § 61-03-21 is titled "Plans of operation for reservoirs – Adequate structure." The section currently does two main things. It requires the operators of all water storage reservoirs with a capacity of more than one thousand acre-feet to submit an annual operating plan to the Department, and it requires such operators to maintain adequate structures. The operating plan requirement further details when the operating plan should be filed, and procedures for an interim operating plan if the Department determines an emergency to exist in connection with operation of the reservoir. The adequate structures requirement also provides a procedure for a hearing to address cancellation of the water use permit if the operator fails to maintain and operate adequate structures.

The changes proposed in House Bill 1073 will:

- Eliminate the annual operating plan requirement for water storage reservoirs having a capacity of more than one thousand acre-feet.
- Remove the one thousand acre-foot capacity cut-off from the remaining section addressing adequate structures.
- Remove the emergency interim operating plan procedures.
- Remove reference to cancellation of the water use permit from this section.

The requirement for annual operating plans is impractical for both dam owners and the State, while adding no benefit to the regulation of dams in North Dakota. An operations and maintenance plan for a dam is something that is best developed when a dam is built. This is a one-time document, rather than annual, and is best addressed as a requirement through the dam safety construction permitting process.

In addition, the need for such an operations and maintenance plan is better tied to the hazard presented by the dam, rather than an arbitrary volume such as the one thousand acre-feet criteria currently presented in N.D.C.C. § 61-03-21. Many low hazard dams, those which present little to no hazard downstream, meet the one thousand acre-foot threshold. Many structures such as lake outlet control structures and low-head dams also fall into this category. However, there is no value to life safety or protection of the public in requiring an annual operating plan for those structures. Removing this requirement will eliminate an unnecessary burden from dam owners.

Similarly, the emergency interim operating plan procedures detailed in N.D.C.C. § 61-03-21 provide no practical benefit to the regulation of dams in North Dakota. Emergency procedures for dams are currently outlined in a dam's emergency action plan, which is a requirement under N.D.C.C. § 61-03-25.

The language in N.D.C.C. § 61-03-21 goes on to address the need for operators of water storage reservoirs to maintain adequate structures. Currently, this language applies only to water storage reservoirs with a capacity of more than one thousand acre-feet. It is possible for dams smaller than one thousand acre-feet to present a hazard downstream. The modified language will remove the arbitrary one thousand acre-foot volume cut-off, requiring operators of all water storage structures to maintain adequate structures.

Some dams do have operating plans or agreements that outline when and how releases of water are to be made. However, these exist when necessary and are

again generally one-time documents that are outside of the operating plan requirements currently outlined in N.D.C.C. § 61-03-21.

While “water storage reservoir” is not specifically defined in existing code, N.D.C.C. § 61-03-21 pertains only to structures that fall within the authorities of the Department as outlined in N.D.C.C. chs. 61-03 and 61-04. Removing the arbitrary one-thousand acre-feet volume cut-off would not expand the Department’s existing authority to any other types of structures beyond what exists in code now.

The language in N.D.C.C. § 61-03-21 referencing cancellation of a water use permit if the operator fails to maintain and operate adequate structures is unnecessary as it is redundant with the authority granted to the Department under N.D.C.C. ch. 61-04. In addition, removing this language further clarifies the concept that it is necessary to maintain adequate structures in all cases, regardless of size or association with a water use permit.

The Department has developed, and continues to enhance, strong dam safety and water appropriation mechanisms to fulfill the Department’s mission to manage water resources of North Dakota for the benefit of its people. These proposed changes to N.D.C.C. § 61-03-21 will greatly clarify and streamline this section of code and will eliminate unnecessary and impractical requirements for dam owners.

The Department of Water Resources supports the passage of House Bill 1073 and fully supports the sound management of water resources across municipal, county, and state jurisdictions.

Thank you for the opportunity to comment, and I would be happy to answer any questions you might have.

Testimony
House Bill 1073 – Department of Water Resources
Senate Energy and Natural Resources
Senator Dale Patten, Chairman
March 2, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee - I am Aaron Carranza, Director of the Regulatory Division of the Department of Water Resources (Department). I am here today to provide you an overview of House Bill 1073, which would amend and reenact section 61-03-21 of the North Dakota Century Code (N.D.C.C.). This bill is part of the governor's overall red-tape reduction initiative by proposing to remove unnecessary regulations.

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