

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2107

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new section to chapter 61-04 of the North Dakota
2 Century Code, relating to water permit applications; and to amend and reenact subsection 4 of
3 section 61-04-05 and section 61-04-06 of the North Dakota Century Code, relating to water
4 permit applications.

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

6 **SECTION 1. AMENDMENT.** Subsection 4 of section 61-04-05 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 4. Provide the state engineer with an affidavit of notice by certified mail within sixty
9 days from the date of the engineer's instructions to provide notice. If the applicant
10 fails to file satisfactory proof of notice by certified mail within sixty days and in
11 compliance with the applicable rules, the state engineer shall treat the application
12 as an original application filed on the date of receipt of the affidavit of notice by
13 certified mail in proper form. Upon receipt of a proper affidavit of notice by certified
14 mail, the state engineer shall publish notice of the application, in a form prescribed
15 by rule, in the official newspaper of the county in which the proposed appropriation
16 site is located, once a week for two consecutive weeks.

17 5. The notice must give all essential facts as to the proposed appropriation, including
18 the places of appropriation and of use, amount of water, the use, the name and
19 address of the applicant, and ~~the time and place of a hearing on the application by~~
20 the date by which written comments regarding the proposed appropriation must be
21 filed with the state engineer. The notice must also state that anyone who files
22 written comments with the state engineer will be mailed a copy of the state
23 engineer's recommended decision on the application.

24 6. The applicant shall pay all costs of the publication of notice.

1 **SECTION 2.** A new section to chapter 61-04 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Comments - Hearing.**

- 4 1. Comments regarding a proposed appropriation must be in writing and filed by the
5 date specified by the state engineer under subsection 5 of section 61-04-05. The
6 comments must state the name and address of the person filing the comments.
- 7 2. The state engineer shall consider all written comments received and shall
8 recommend in writing approval or disapproval of the application or that the
9 application be held in abeyance. A copy of the recommended decision must be
10 mailed to the applicant and any person who filed written comments.
- 11 3. Within thirty days of service of the recommended decision, the applicant and any
12 person who filed written comments may file additional written comments with the
13 state engineer or request a hearing on the application, or both. If a request for a
14 hearing is not made, the state engineer shall consider the additional comments, if
15 any are submitted, and issue a final decision. If a request for a hearing is made, or
16 if the state engineer determines a hearing is necessary to obtain additional
17 information to evaluate the application or to receive public input, the state engineer
18 shall designate a time and place for the hearing and serve a copy of the notice of
19 hearing upon the applicant and any person who filed written comments. Service
20 must be made in the manner allowed for service under the North Dakota Rules of
21 Civil Procedure at least twenty days before the hearing.
- 22 4. If two or more municipal or public use water facilities request the hearing to be held
23 locally, the state engineer shall hold the hearing in the county seat of the county in
24 which the proposed water appropriation site is located.

25 **SECTION 3. AMENDMENT.** Section 61-04-06 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 ~~**61-04-06. Hearing—Criteria for issuance of permit.** Upon the receipt of the proof of~~
28 ~~publication, the state engineer shall conduct a hearing on the application. If two or more~~
29 ~~municipal or public use water facilities request a local hearing, the state engineer shall hold the~~
30 ~~hearing in the county seat of the county in which the proposed water appropriation site is~~
31 ~~located. The request must be in writing and must be made within fifteen days of when the~~

1 ~~notice of application is mailed by the applicant pursuant to section 61-04-05.~~ The state
2 engineer shall issue a permit if the state engineer finds all of the following:

- 3 1. The rights of a prior appropriator will not be unduly affected.
- 4 2. The proposed means of diversion or construction are adequate.
- 5 3. The proposed use of water is beneficial.
- 6 4. The proposed appropriation is in the public interest. In determining the public
7 interest, the state engineer shall consider all of the following:
 - 8 a. The benefit to the applicant resulting from the proposed appropriation.
 - 9 b. The effect of the economic activity resulting from the proposed appropriation.
 - 10 c. The effect on fish and game resources and public recreational opportunities.
 - 11 d. The effect of loss of alternate uses of water that might be made within a
12 reasonable time if not precluded or hindered by the proposed appropriation.
 - 13 e. Harm to other persons resulting from the proposed appropriation.
 - 14 f. The intent and ability of the applicant to complete the appropriation.

15 Subsection 1 of section 28-32-12.2 does not apply to water permit application proceedings
16 provided the state engineer takes action necessary to ensure parties to the proceeding are
17 accorded due process. If an application is approved, ~~the approval must be noted on the~~
18 ~~application,~~ and the state engineer shall issue a conditional water permit allowing the applicant
19 to appropriate water. Provided, however, the commission may, by resolution, reserve unto
20 itself final approval authority over any specific water permit in excess of five thousand acre-feet
21 [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared
22 for any hearing conducted pursuant to this section. The costs for the original and up to nine
23 copies of the transcript must be paid by the applicant.