

Introduced by

Energy and Natural Resources Committee

(At the request of the State Water Commission)

1 A BILL for an Act to amend and reenact section 61-16.1-38 of the North Dakota Century Code,  
2 relating to the state engineer's authority regarding construction permit thresholds for dikes,  
3 dams, and other devices.

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

5 **SECTION 1. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **61-16.1-38. Permit to construct or modify dam, dike, or other device**  
8 **required - Penalty - Emergency.**

9 ~~No dikes~~Dikes, dams, or other devices for water conservation, flood control regulation,  
10 watershed improvement, or water storage of water which are~~must be constructed in accordance~~  
11 with this chapter. A construction permit from the state engineer is required for each low-hazard  
12 dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet  
13 [61674.08 cubic meters] of water or; medium-hazard or high-hazard dam capable of retaining,  
14 obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water for a  
15 ~~medium-hazard or high-hazard dam, may be constructed within any district except in~~  
16 ~~accordance with the provisions of this chapter. An; low-risk dike capable of protecting more than~~  
17 eighty acres [32.37 hectares] of land area; and moderate-risk or high-risk dike. A permit  
18 application for the construction of any dike, dam, or other device, along with complete plans and  
19 specifications, must be ~~presented first~~submitted to the state engineer. ~~Except for low-hazard~~  
20 ~~dams less than ten feet [3.05 meters] in height or agricultural dikes less than two feet~~  
21 ~~[0.61 meters] in height~~Unless otherwise stipulated by the state engineer, the plans and  
22 specifications must be completed by a professional engineer. The professional engineer must  
23 be registered in this state. ~~After receipt, the~~The state engineer shall consider the application in  
24 ~~such as much~~ detail as the state engineer deems necessary and proper. The state engineer

1 shall refuse to allow the construction of any unsafe or improper dike, dam, or other device  
2 ~~which~~that would interfere with the orderly control of the water resources of the district, or may  
3 order ~~such~~ changes, conditions, or modifications as in the state engineer's judgment ~~of the state-~~  
4 ~~engineer~~ may be necessary for safety or the protection of property. Within forty-five days after  
5 receipt of the application, except in unique or complex situations, the state engineer shall  
6 complete the state engineer's initial review of the application and forward the application, along  
7 with any changes, conditions, or modifications, to the water resource board of the district within  
8 which the contemplated project is located. The board ~~thereupon~~ shall consider; the application  
9 within forty-five days; ~~the application~~; and suggest any changes, conditions, or modifications to  
10 the state engineer. If the application meets with the board's approval, the board shall forward  
11 the approved application to the state engineer. If the board fails to respond within forty-five  
12 days, ~~it shall be determined~~the state engineer will determine the board has no changes,  
13 conditions, or modifications. The state engineer shall make the final decision on the application  
14 and forward that decision to the applicant and the local water resource board. The state  
15 engineer may issue temporary permits for dikes, dams, or other devices in cases of an  
16 emergency. Any person constructing a dam, dike, or other device, ~~which is capable of retaining,~~  
17 ~~obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five-~~  
18 ~~acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam,~~ without  
19 first securing a necessary permit ~~to do so~~, as required by this section; is liable for all damages  
20 proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.